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Supreme Court of the United States

OCTOBER TERM, 1962

No. 271

MAURICE L. DAVIS, ETC., PETITIONER,

vs.

ROMUALD M. SOJA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 23, 1962
CERTIORARI GRANTED OCTOBER 8, 1962

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APPENDIX.

1 UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

IN THE MATTER OF THE APPLICATION FOR ENFORCEMENT OF SUMMONSES ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE TO MAURICE L. AND HELEN T. DAVIS, Individually, and MAURICE L. DAVIS, as Trustee of Trusts "A" and "B", dated March 1, 1952, and Trusts "A", "B", "C", and "D", dated October 1, 1952.	No. 61 C 1502

PREFIX TO RECORD UNDER RULE 12(c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS.

1. This suit was commenced on September 7, 1961.

2. The plaintiff-petitioner is Romuald M. Soja, Internal Revenue Agent. The original petition named as defendants Maurice L. Davis and Helen T. Davis, individually, and Maurice L. Davis as Trustee of Trusts "A" and "B", dated March 1, 1952, and Trusts "A", "B", "C", and "D", dated October 1, 1952.

3. The petition was filed September 7, 1961. The answer of Maurice L. Davis was filed September 25, 1961.

4. There were no arrests made, bail taken, or property attached.

2 5. A hearing was had in this matter on September 26, 1961, before the Honorable Michael L. Igoe.

6. On September 27, 1961, the Honorable Michael L. Igoe entered an order directing Maurice L. Davis as an individual and Maurice L. Davis as Trustee of Trusts "A" and "B", dated March 1, 1952, and Trusts "A", "B", "C", and "D", dated October 1, 1952, to comply with eight (8) summonses issued by the plaintiff-petitioner and attached as exhibits to his petition, and to produce all books and records called for in said summonses on or before September 29, 1961, for examination by the plaintiff-petitioner.

7. Notice of appeal was filed by the defendants Maurice L. Davis and Helen T. Davis, individually, and Maurice L. Davis, as Trustee, on September 28, 1961.

Respectfully submitted,

/s/ Walter J. Rockler
Walter J. Rockler
Attorney for Defendants-Appellants.

Suite 2900
105 West Adams Street
Chicago 3, Illinois
FRanklin 2-6275

3 PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of September, being the 11th day thereof, in the Year of Our Lord One Thousand Nine Hundred Sixty One and of the Independence of the United States of America, the 186th Year.

Present:

Honorable William J. Campbell, Chief District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable J. Sam Perry, District Judge.
Honorable Julius J. Hoffman, District Judge.
Honorable Julius H. Miner, District Judge.
Honorable Edwin A. Robson, District Judge.
Honorable Walter J. La Buy, District Judge Retired.
Honorable Richard B. Austin, District Judge, Inducted September 15, 1961.
Honorable James B. Parsons, District Judge, Inducted September 22, 1961.

Also Present:

Honorable Albert B. Maris, Senior United States Circuit Judge of the Third Circuit.

sitting pursuant to designation.

Roy H. Johnson, Clerk

Joseph N. Tierney, Marshal

Wednesday, September 27, 1961

Court Met Pursuant To Adjournment

Present: Honorable Michael L. Igoe, Trial Judge

4

UNITED STATES DISTRICT COURT
(Caption—No. 61 C 1502).

PETITION.

(Filed Sep 7 1961)

Now comes the Petitioner, Romuald M. Soja, Internal Revenue Agent, a duly authorized delegate of the Secretary of the Treasury, by his attorney, James P. O'Brien, United States Attorney for the Northern District of Illinois, and states as follows:

1. That the respondents, Maurice L. and Helen T. Davis, as individuals, and Maurice L. Davis as Trustee of Trusts "A" and "B," dated March 1, 1952, and Trusts "A," "B," "C," and "D," dated October 1, 1952, reside or may be found in this judicial district.

2. That the Internal Revenue Service is investigating the Internal Revenue tax liability to the United States of Maurice L. and Helen T. Davis.

3. That pursuant to Sections 7602 and 7603, Internal Revenue Code of 1954, the Commissioner of Internal Revenue, a delegate of the Secretary of the Treasury of the United States, by and through Romuald M. Soja, Internal Revenue Agent, served summonses upon the respondents, Maurice L. and Helen T. Davis, as individuals, and upon Maurice L. Davis as Trustee of Trusts "A" and "B" dated March 1, 1952, and Trusts "A," "B,"
5 "C," and "D" dated October 1, 1952, on the 12th day of July, 1961. The original summonses with the Certificate of Service thereof are attached hereto as Petitioner's Exhibits "A," "B," "C," "D," "E," "F," "G," and "H," respectively. Attached hereto as Exhibit "I" is the Affidavit of Romuald M. Soja, Internal Revenue Agent, setting forth the service of said summonses upon Maurice L. and Helen T. Davis, as individuals, and upon

Maurice L. Davis as Trustee of Trusts "A" and "B" dated March 1, 1952, and Trusts "A," "B," "C," and "D," dated October 1, 1952.

4. That the said respondent, Helen T. Davis, has failed to comply with said summons in that she failed to appear at the time and place appointed, as required by said summons, as more fully appears from the Affidavit of Romuald M. Soja, Internal Revenue Agent, which is attached hereto as Exhibit "I."

5. That the said respondent, Maurice L. Davis, as an individual, has failed to comply with said summons in that he failed to produce his books and records and other documents at the time and place appointed, as required by said summons, as more fully appears from the Affidavit of Romuald M. Soja, Internal Revenue Agent, which is attached hereto as Exhibit "I."

6. That the said respondent, Maurice L. Davis, as Trustee of Trust "A" dated March 1, 1952, failed to comply with said summons in that he did not produce a copy of the partnership agreement for the H & R Builders partnership, of which Edward Hochman, Haskell Richards, Maurice L. Davis as Trustee under Trust "A" dated March 1, 1952, and Maurice L. Davis as Trustee under Trust "B" dated March 1, 1952, were members, nor did he produce copies of all partnership returns filed by H & R Builders from date of organization to date of dissolution, at the time and place appointed, as required by said summons, as more fully appears from the Affidavit of Romuald M. Soja, Internal Revenue Agent, which is attached hereto as Exhibit "I."

6 7. That the said respondent, Maurice L. Davis, as Trustee of Trusts "A" and "B" dated March 1, 1952, failed to comply with said summons in that he did not produce the books and records of the trusts for the taxable years ended February 28, 1953, February 28, 1954,

Febuary 28, 1955, and February 29, 1956, as required by said summonses, as more fully appears from the Affidavit of Romuald M. Soja, Internal Revenue Agent, which is attached hereto as Exhibit "I."

8. That the said respondent, Maurice L. Davis, as Trustee of Trusts "A," "B," "C," and "D" dated October 1, 1952, failed to comply with said summonses in that he did not produce the books and records of the trusts for the taxable years ended September 30, 1953, September 30, 1954 and September 30, 1955, as required by said summonses, as more fully appears from the Affidavit of Romuald M. Soja, Internal Revenue Agent, which is attached hereto as Exhibit "I."

9. That there are reasonable grounds for believing that the books and records of the individuals and trusts, and the partnership returns and partnership agreement of H & R Builders contain information important and material to the said investigation now being conducted by the Internal Revenue Service.

Wherefore, in accordance with the provisions of Section 7604, Internal Revenue Code of 1954, your Petitioner prays:

1. That a Writ of Attachment be issued, notifying the United States Marshal to bring the respondents, Maurice L. and Helen T. Davis, as individuals, and Maurice L. Davis, as Trustee of Trusts "A" and "B" dated March 1, 1952, and Trusts "A," "B," "C," and "D" dated October 1, 1952 before this court forthwith to show cause why they should not be held for contempt for failure to comply with said Commissioner's summons.

2. That the court issue its Order that the respondents, Maurice L. and Helen T. Davis, as individuals, and Maurice L. Davis as Trustee of Trusts "A" and "B," dated March 1, 1952, and Trusts "A," "B," "C," and

"D" dated October 1, 1952, must comply with the summonses issued by the Internal Revenue Service.

3. That the court grant such other and further relief in the premises as it shall deem necessary.

/s/ James P. O'Brien
James P. O'Brien
United States Attorney

8 EXHIBIT "A".

Form 2039
May 1955

U. S. Treasury Department—Internal Revenue Service

SUMMONS

In the matter of the tax liability of
Trust "A" Dated March 1, 1952
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Internal Revenue District of Chicago
Period(s) Fiscal Years Ended: 2/28/55 and 2/29/56

The Commissioner of Internal Revenue

To: Maurice L. Davis, Trustee
At: 33 South Clark Street
Chicago 3, Illinois

Greeting

You are hereby summoned and required to appear before Romuald M. Soja, an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

The taxpayers' books and records for the years ended 2/28/53, 2/28/54, 2/28/55 and 2/28/56 as follows:

(1) Cash Receipts and Disbursements Journals
(2) Sales Journals
(3) General Journal
(4) General Ledger
(5) Subsidiary Ledgers
(6) Audit Reports
(7) All bank statements, cancelled checks, bank deposit slips, vouchers, notes, and invoices relating to the income tax liability of the above-named individuals.

Place and time for appearance:

At Room 1426, 17 North Dearborn Street, Chicago, Illinois. (Tel: DE 2-4500, Ext. 555) on the 24th day of July 1961, at 10:00 o'clock A.M.

Failure to comply this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954 this 12th day of July, 1961.

ORIGINAL

Signature: /s/ Romuald M. Soja
Title: Internal Revenue Agent

9 CERTIFICATE OF SERVICE OF SUMMONS

(Pursuant to Section 7603, Internal Revenue Code of 1954)

I hereby certify that I served the summons on the reverse hereof Date Summons Served (Day, month, year) July 12, 1961 Time 9:50 A.M.

How Summons Was Served: I handed an attested copy thereof to the person to whom it was directed.

Signature: /s/ Romuald M. Soja
Title: Internal Revenue Agent

Sec. 7603. Service of Summons.—A summons issued under section 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

10 EXHIBIT "B".

Form 2039
May 1955

U. S. Treasury Department—Internal Revenue Service

SUMMONS

In the matter of the tax liability of
Maurice L. and Helen T. Davis
33 South Clark Street,
Chicago 3, Illinois

Internal Revenue District of Chicago
Period(s) 1954 and 1955

The Commissioner of Internal Revenue

To: Maurice L. and Helen T. Davis
At: 33 South Clark Street
Chicago 3, Illinois

Greeting

You are hereby summoned and required to appear before Romuald M. Soja, an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the period(s) designated to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

The taxpayers' books and records for the years 1954 and 1955, as follows:

(1) Cash Receipts and Disbursements Journals
(2) Sales Journals
(3) General Journal
(4) General Ledger
(5) Subsidiary Ledgers
(6) Audit Reports
(7) All bank statements, cancelled checks, bank deposit slips, vouchers, notes, and invoices relating to the income tax liability of the above-named individuals.

Place and time for appearance:

At Room 1426, 17 North Dearborn Street, Chicago, Illinois. (Tel. DE 2-4500, Ext. 555) on the 24th day of July, 1961, at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954 this 12th day of July, 1961.

ORIGINAL

Signature: /s/ Romuald M. Soja
Title: Internal Revenue Agent

11 Certificate of service on Mr. Maurice L. Davis, July 12, 1961 at 9:50 A.M. by Romuald M. Soja, Internal Revenue Agent.

12 EXHIBIT "C".

Form 2039
May 1955

U. S. Treasury Department—Internal Revenue Service

SUMMONS

In the matter of the tax liability of
Trust "A" Dated March 1, 1952
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Internal Revenue District of Chicago
Period(s) Fiscal Years Ended: 2/28/55 and 2/29/56.

The Commissioner of Internal Revenue

To: Maurice L. Davis, Trustee
At: 33 South Clark Street
Chicago 3, Illinois

Greeting

You are hereby summoned and required to appear before Romuald M. Soja, an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth: A copy of the partnership agreement for the H.&R. Builders partnership of which Edward Hochman, Haskell ~~Richards, Maurice~~ L. Davis As Trustee

Under Trust "A" Dated March 1, 1952, and Maurice L. Davis as Trustee Under Trust "B" Dated March 1, 1952, were members. Copies of all Partnership Returns filed by H.&R. Builders from date of organization to date of dissolution. (Believed to be taxable years or periods beginning in 1951 and ending in 1953).

The books and records of the H.&R. Builders from date of organization through and including date of dissolution, as follows:

(1) Cash Receipts and Disbursements Journals
(2) Sales Journals
(3) General Journals
(4) General Ledger
(5) Subsidiary Ledgers
(6) Audit Reports
(7) All bank statements, cancelled checks, bank deposit slips, vouchers, notes, and invoices, relating to entries in the books of original entry of H.&R. Builders.

Place and time for appearance:

At Room 1426, 17 North Dearborn Street, Chicago, Illinois. (Tel: DE. 2-4500, Ext. 555) on the 24th day of July 1961, at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954 this 12th day of July, 1961.

ORIGINAL

Signature: /s/ Romuald M. Soja
Title: Internal Revenue Agent

13 Certificate of service on July 12, 1961 at 9:50 A.M. by Romuald M. Soja, Internal Revenue Agent.

14 EXHIBIT "D".

Form 2039
May 1955

U. S. Treasury Department—Internal Revenue Service

SUMMONS

In the matter of the tax liability of
Trust "B" Dated March 1, 1952
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Internal Revenue District of Chicago
Period(s) Fiscal Years Ended: 2/28/55 and 2/29/56

The Commissioner of Internal Revenue

To: Maurice L. Davis, Trustee
At: 33 South Clark Street
Chicago 3, Illinois

Greeting

You are hereby summoned and required to appear before Romuald M. Soja, an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

The taxpayers' books and records for the years ended 2/28/53, 2/28/54, 2/28/55 and 2/29/56, as follows:

(1) Cash Receipts and Disbursements Journals.
(2) Sales Journals
(3) General Journal
(4) General Ledger
(5) Subsidiary Ledgers
(6) Audit Reports
(7) All bank statements, cancelled checks, bank deposit slips, vouchers, notes, and invoices relating to the income tax liability of the above-named individuals.

Place and time for appearance:

At Room 1426, 17 North Dearborn Street, Chicago, Illinois. (Tel: DE. 2-4500, Ext. 555) on the 24th day of July 1961, at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954 this 12th day of July, 1961.

ORIGINAL

Signature: /s/ Romuald M. Soja
Title: Internal Revenue Agent

15 Certificate of service on July 12, 1961 at 9:50 A.M. by Romuald M. Soja, Internal Revenue Agent.

16 EXHIBIT "E".

Form 2039
May 1955

U. S. Treasury Department—Internal Revenue Service

SUMMONS

In the matter of the tax liability of
Trust "A" dated October 1, 1952
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Internal Revenue District of Chicago, Illinois
Period(s) Fiscal Years Ended: 9/30/54 and 9/30/55

The Commissioner of Internal Revenue

To: Maurice L. Davis, Trustee
33 South Clark Street
At: Chicago 3, Illinois

Greeting

You are hereby summoned and required to appear before Romuald M. Soja an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

The taxpayers' books and records for the years ended 9/30/53, 9/30/54 and 9/30/55 as follows:

(1) Cash Receipts and Disbursements Journals
(2) Sales Journals
(3) General Journal
(4) General Ledger
(5) Subsidiary Ledgers
(6) Audit Reports
(7) All bank statements, cancelled checks, bank deposit slips, vouchers, notes, and invoices relating to the income tax liabilities of the above named trust.

Place and time for appearance:
At Room 1426, 17 North Dearborn Street, Chicago, Illinois. (Tel: DE 2-4500, Ext. 555). on the 24th day of July 1961, at 10:00 o'clock A.M.
Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954 this 12th day of July, 1961.

ORIGINAL

Signature: /s/ Romuald M. Soja
Title: Internal Revenue Agent

17 Certificate of Service on July 12, 1961 at 9:50 A.M. by Romuald M. Soja, Internal Revenue Agent.

18 EXHIBIT "F"

Form 2039
May 1955

U. S. Treasury Department—Internal Revenue Service

SUMMONS

In the matter of the tax liability of
Trust "B" dated October 1, 1952
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Internal Revenue District of Chicago, Illinois
Period(s) Fiscal Years Ended: 9/30/54 and 9/30/55

The Commissioner of Internal Revenue

To: Maurice L. Davis, Trustee
33 South Clark Street
At: Chicago 3, Illinois

Greeting

You are hereby summoned and required to appear before Romuald M. Soja an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

The taxpayers' books and records for the years ended 9/30/53, 9/30/54 and 9/30/55 as follows:

(1) Cash Receipts and Disbursements Journals
(3) General Journal
(2) Sales Journals
(4) General Ledger
(5) Subsidiary Ledgers
(6) Audit Reports
(7) All bank statements, cancelled checks, bank deposit slips, vouchers, notes, and invoices relating to the income tax liability of the above-named trust.

Place and time for appearance:
At Room 1426, 17 North Dearborn Street, Chicago, Illinois. (Tel: DE 2-4500, Ext. 555). on the 24th day of July 1961, at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954 this 12th day of July, 1961.

18 *Exhibit "G"*

ORIGINAL

Signature: /s/ Romuald M. Soja
Title: Internal Revenue Agent

19 Certificate of Service on July 12, 1961 at 9:50 A.M. by Romuald M. Soja, Internal Revenue Agent.

20 EXHIBIT "G"

Form 2039
May 1955

U. S. Treasury Department—Internal Revenue Service

SUMMONS

In the matter of the tax liability of
Trust "C" dated October 1, 1952
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Internal Revenue District of Chicago, Illinois
Period(s) Fiscal Years Ended: 9/30/54 and 9/30/55

The Commissioner of Internal Revenue

To: Maurice L. Davis, Trustee
33 South Clark Street
At: Chicago 3, Illinois

Greeting

You are hereby summoned and required to appear before Romuald M. Soja, an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

The taxpayers' books and records for the years ended 9/30/53, 9/30/54 and 9/30/55, as follows:

(1) Cash Receipts and Disbursements Journals
(2) Sales Journals
(3) General Journal
(4) General Ledger
(5) Subsidiary Ledgers
(6) Audit Reports
(7) All bank statements, cancelled checks, bank deposit slips, vouchers, notes, and invoices relating to the income tax liability of the above-named trust.

Place and time for appearance:

At Room 1426, 17 North Dearborn Street, Chicago, Illinois. (Tel. DE 2-4500, Ext. 555), on the 24th day of July 1961, at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954 this 12th day of July, 1961.

ORIGINAL

Signature /s/ Romuald M. Soja
Title: Internal Revenue Agent

21 Certificate of service on July 12, 1961 at 9:50 A.M. by Romuald M. Soja, Internal Revenue Agent.

22 EXHIBIT "H"

Form 2039
May 1955

U. S. Treasury Department—Internal Revenue Service

Exhibit "H"

SUMMONS

In the matter of the tax liability of
Trust "D" dated October 1, 1952
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Internal Revenue District of Chicago, Illinois
Period(s) Fiscal Years Ended: 9/30/54 and 9/30/55

The Commissioner of Internal Revenue

TO: Maurice L. Davis, Trustee
33 South Clark Street
AT: Chicago 3, Illinois

Greeting

You are hereby summoned and required to appear before ..... an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

The taxpayers' books and record for the years ended: 9/30/53, 9/30/54 and 9/30/55, as follows:

(1) Cash Receipts and Disbursements Journals
(2) Sales Journals
(3) General Journal
(4) General Ledger
(5) Subsidiary Ledgers
(6) Audit Reports
(7) All bank statements, cancelled checks, bank deposit slips, vouchers, notes, and invoices relating to the income tax liability of the above-named trust.

Place and time for appearance.

At Room 1426, 17 North Dearborn Street, Chicago, Illinois. (Tel: DE 2-4500, Ext. 555) on the 24th day of July 1961, at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954 this 12th day of July, 1961.

ORIGINAL

Signature: /s/ Romuald M. Soja
Title: Internal Revenue Agent

23 Certificate of Service on July 12, 1961 at 9:50 A. M. by Romuald M. Soja, Internal Revenue Agent.

24 EXHIBIT "I"

United States of America)
State of Illinois) ss.
County of Cook)

AFFIDAVIT

Romuald M. Soja being first duly sworn, deposes, and says: That he is now and at all times hereinafter mentioned was, an Internal Revenue Agent and as such is authorized by Treasury Regulations 301.7602-1 to serve the summonses authorized by section 7602 of the Internal Revenue Code of 1954; that on July 12, 1961 he properly served summonses upon Maurice L. Davis, individually and as trustee of the following trusts:

Trust A dated March 1, 1952
Trust B dated March 1, 1952

Trust A dated October 1, 1952
Trust B dated October 1, 1952
Trust C dated October 1, 1952
Trust D dated October 1, 1952;

that Maurice L. Davis appeared before him on July 24, 1961 in response to each of the summonses but refused to produce any of the records or information requested therein.

/s/ Romuald M. Soja
Romuald M. Soja

Subscribed And Sworn To
before me this 7 day of
Sept., 1961.
/s/ Willard A. Evens
Notary Public in and for the County of Cook
and State of Illinois
(Seal)

25

UNITED STATES DISTRICT COURT

(Caption—No. 61 C 1502)

NOTICE.
(Filed Sep 12 1961)

To: Mr. & Mrs. Maurice L. Davis
33 South Clark Street
Chicago, Illinois

Please Take Notice that on Wednesday, September 13, 1961, at the opening of court or as soon thereafter as counsel may be heard, I will appear before His Honor Judge Michael L. Igoe, in the courtroom usually occupied by him in the United States Court House, 219 South Clark Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and

there present a Petition which was filed with the Clerk of the Court on September 7, 1961, copy of which is attached hereto and made a part hereof; at which time and place you may appear if you so see fit.

/s/ James P. O'Brien
James P. O'Brien
United States Attorney

Received copy of the aforementioned
document this 8th day of September,
A.D., 1961.
/s/ Maurice L. Davis
/s/ per L. Meyer

26 AFFIDAVIT OF DELIVERY.

State of Illinois } ss
County of Cook }

Wardell G. Abbott, Being first duly sworn, on oath deposes and says that he is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 8th day of September, 1961, he delivered a copy of:

PETITION—CASE NO. 61 C 1502

in an envelope addressed to:
Mr. & Mrs. Maurice L. Davis
33 South Clark St.
Chicago, Illinois

/s/ Wardell G. Abbott

Subscribed and Sworn to before me,
this 8th day of September, 1961.
/s/ Steve Babyar
Notary Public
(Seal)

27

IN THE UNITED STATES DISTRICT COURT

Wednesday, September 13, 1961
Present: Honorable Michael L. Igoe
District Judge

• • (Caption—No. 61 C 1502) • •

It is Ordered that hearing on Government's Petition for Enforcement of Internal Revenue Summons be and it hereby is set for September 22, 1961 at 2 P.M.

28

IN THE UNITED STATES DISTRICT COURT

Friday, September 22, 1961
Present: Honorable Michael L. Igoe
District Judge

• • (Caption—No. 61 C 1502) • •

The Court being fully advised in the premises it is Ordered that rule to show cause herein issue directed to Maurice L. Davis ordering him to show cause, if any there be, why summons prayed for in the petition herein should not issue, said rule returnable before this Court on September 26, 1961 at 10 A.M.

29

UNITED STATES DISTRICT COURT

• • (Caption—No. 61 C 1502) • •

ANSWER OF MAURICE L. DAVIS.
(Filed Sep 25 1961)

Maurice L. Davis, respondent named in the petition filed with the clerk of this court, in this proceeding, on September 7, 1961, for answer to such petition, says:

1. This respondent admits the matters alleged in paragraph numbered 1 of the petition.

2. This respondent admits the matters alleged in paragraph numbered 2 of the petition; and says that the investigation referred to has been in progress since prior to 1959.

3. This respondent admits the service upon him of summonses as set forth in paragraph numbered 3 of the petition. These summonses were served upon this respondent on July 12, 1961, returnable July 24, 1961.

None of such summonses was served upon the respondent Helen T. Davis.

Notice of the present proceeding, and of the application made herein on September 13, 1961, was given 30 ℄ to this respondent. One copy of such notice was delivered to this respondent, at his business office, at number 33 South Clark Street, Chicago, Illinois.

No notice was directed to Helen T. Davis, and no copy of any notice herein, or in respect of this proceeding, or in respect of any application by the United States Attorney, was delivered to or served upon Helen T. Davis.

4. As to paragraph numbered 4 of said petition, this respondent admits that the respondent Helen T. Davis did not appear at the time and place appointed in the summonses; but says that she was not required to obey any of the summonses, or to appear in compliance therewith, because she was not served with any of such summonses. The affidavit of R. M. Soja, Internal Revenue Agent, attached to the petition, does not show service of any summons upon Helen T. Davis.

5. As to paragraph numbered 5 of said petition, this respondent says that he did appear on July 24, 1961, at 10:00 o'clock A.M., before Romuald M. Soja, an officer of Internal Revenue Service, as commanded by the summonses, and states that he then refused to produce any

books or records or other documents, asserting the impropriety of the demand therefor.

6. As to paragraph numbered 6 of said petition: the members of the partnership of H & R Builders were the following: Edward Hochman; Haskell Richards; and Maurice L. Davis, as trustee under trusts A and B dated March 1, 1952. The partnership was dissolved and its assets distributed after February 28, 1953 and prior to February 28, 1954. The fiscal year of Maurice L. Davis, as trustee under trusts A and B dated March 1, 1952, ends on February 28th, and income tax returns, in respect of the fiscal years of such trusts ended February 28, 1954, and February 28, 1955, were filed in apt time, in respect of such trusts. By extension, the period of limitations in respect of tax claims against such trusts, for the fiscal years ended February 28, 1954 and February 28, 1955 was enlarged to June 30, 1960. Accordingly, any transactions pertaining to the partnership of H & R Builders, may no longer be the subject of inquiry or investigation, because of the bar of the statute of limitations. No fraud is charged by Internal Revenue Service, nor has Internal Revenue Service claimed any reasonable basis for suspicion of fraud, in respect of transactions pertaining to H & R Builders, or the reporting of the income therefrom.

7. This respondent admits that he did not produce any books and records of Trusts "A" and "B" dated March 1, 1952, for the taxable years ended February 28, 1953, February 28, 1954, February 28, 1955 and February 29, 1956. Tax returns were filed by this respondent, as trustee under such trusts, in apt time, for all such years. All tax claims for such years were, prior to the time of service of the summonses, barred by the statute of limitations. No fraud is charged by Internal Revenue Service,

nor has Internal Revenue Service claimed any reasonable basis for suspicion of fraud, in respect of the tax returns filed by this respondent, as such trustee, for any of such taxable years.

32 8. This respondent admits that he did not produce any books and records of Trusts "A", "B", "C" or "D", dated October 1, 1952, for the taxable years ended September 30, 1953, September 30, 1954 or September 30, 1955. Tax returns were filed by this respondent, as trustee under such trusts, in apt time, for all such years. All tax claims for such years were, prior to the time of service of the summonses, barred by the statute of limitations. No fraud is charged by Internal Revenue Service, nor has Internal Revenue Service claimed any reasonable basis for suspicion of fraud, in respect of the tax returns filed by this respondent, as such trustee, for any of such taxable years.

9. Paragraph numbered 9 of the petition is vague, uncertain and indefinite, and consists only of conclusions. It states no facts supporting any reasonable grounds for belief that any of the books and records or other papers sought by the summonses would contain information important or material to any investigation now being conducted by Internal Revenue Service.

10. Section 7605 of the Internal Revenue Code provides as follows (in part):

> "No taxpaper shall be subjected to unnecessary examinations or investigations • • ".

No showing has been made by Internal Revenue Service, nor are any facts alleged in the petition, supporting or establishing the proposition that the examination sought by the summonses is necessary. It does not appear from the petition, by any averment of fact, that such

33 examination is necessary.

11. Where income tax years are barred (as in the present case) by the statute of limitations, a court hearing is required on the question of whether there are reasonable grounds for suspecting fraud, before the government's demand for production of the taxpayer's records may be enforced. (See Aluminum Siding Corp. v. Eshleman, 170 Fed. Supp. 12). A summons pertaining to taxable years barred by the statute of limitations may be enforced only if there is a reasonable basis for suspicion of fraud. (See Lash v. Nighosian, 273 F. 2nd 185; O'Connor v. O'Connell, 253 F. 2nd 365).

12. Section 7605 of the Internal Revenue Code provides as well that

> "only one inspection of a taxpayer's books of accounts shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary or his delegate, after investigation, notifies the taxpayer in writing that an additional inspection is necessary."

It does not appear from the petition filed herein that any notice was given by the Secretary or his delegate, to either respondent, that an additional inspection of the taxpayers' books and records is or was necessary; and it does not appear from such petition that any investigation has been made by the Secretary or his delegate, or otherwise by Internal Revenue Service, leading to the conclusion or establishing that an additional inspection is necessary.

34 13. Following an extensive inspection and examination of books and records of this respondent, by Roger T. Leonard, an agent of Internal Revenue Service, said agent, on February 9, 1959, served a ten-day letter upon this respondent. Thereafter, on September 9, 1959, the District Director of Internal Revenue at Chicago, Illinois submitted a report of Agent Robert

T. Leonard dated June 12, 1959, relating to an examination of the tax returns of Maurice L. Davis and Helen T. Davis for the years 1954 and 1955. A true copy thereof is attached hereto as exhibit "1". On February 15, 1960, Maurice L. Davis and Helen T. Davis filed with the District Director of Internal Revenue, at Chicago, Illinois, a protest against the proposed deficiencies set out in the September 9, 1959 letter of the said District Director. Attached as exhibit "2" hereto, is a copy of the protest so filed with the said District Director, on February 15, 1960. Following such protest, a hearing was had before the Appellate Staff of Internal Revenue Service, at Chicago, Illinois, for the purpose of disposing of the matter; and at such hearing, request was made of this respondent that he produce further records. Respondent thereafter furnished to the Appellate Staff of Internal Revenue Service all of the records requested.

All of the occurrences hereinabove set forth took place prior to the service of the summonses herein.

14. Accordingly, the petition for enforcement of the summonses, against this respondent, individually and as trustee as described in such petition, ought be denied.

/s/ Maurice L. Davis

35 State of Illinois }
County of Cook } ss

Maurice L. Davis, being first duly sworn, on oath deposes and says that he is a respondent herein; that he has read the foregoing answer by him subscribed; that he knows the contents thereto; and he says that the same is true.

/s/ Maurice L. Davis

Subscribed and sworn to before me
this 25 day of September, 1961.
/s/ Leona Meyer
Notary Public
(Seal)

36-51 • • •
53-57 • • •

1

IN THE UNITED STATES DISTRICT COURT

• • • (Caption—No. 61 C 1502) • • •

TRANSCRIPT OF PROCEEDINGS
(Filed Nov 2 1961)

had in the above-entitled case taken before the Honorable Michael L. Igoe, one of the Judges of said Court, without a jury, in his Courtroom in the United States Courthouse at Chicago, Illinois, on Tuesday, September 26, 1961, at 10:00 o'clock a.m.

Appearances:

Hon. James P. O'Brien
U. S. District Attorney, By
Mr. Henry T. Sanders
Asst. U. S. District Attorney
Representing the Petitioner,

Mr. Maurice L. Davis
Pro se

2 The Clerk: 61 C.1502. Application for the enforcement of summonses to Maurice L. Davis for return of rule to show cause.

Mr. Davis: If the Court please, when this matter was up on the call Friday, Your Honor instructed that I answer by ten o'clock this morning. I did answer it yesterday afternoon and a copy of that answer was made available to the United States Attorney's office at the end of the day yesterday. I am ready for trial.

Mr. Sanders: We are also, Your Honor.

The Court: We are not. We have a case on trial.

Mr. Davis: When could Your Honor hear it? Is there any way of knowing?

The Court: Yes, if we could find out when this case on trial is finished.

Mr. Sanders: Your Honor, we would like to call the Court's attention that this is a problem where we have the statute of limitations which will expire this week.

The Court: Yes?

Mr. Sanders: So, if we could get a hearing even a brief one, we would appreciate the Court's order
3 requiring the defendants to produce their books and records and to disclose the matter in that fashion.

Mr. Davis: That is a matter in issue and with respect to which I would like to be heard on.

Mr. Sanders: There are no controverted issues here really.

The Court: All right, we will hear you this afternoon at four-thirty.

Mr. Sanders: Thank you, Your Honor.

Mr. Davis: Thank you, sir.

The Court: Yes, sir.

(Whereupon further hearing in the above-entitled matter was continued until 4:30 p.m., Tuesday, September 26, 1961.)

4

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 61 C 1502)

Before Judge Michael L. Igoe.
Tuesday, September 26, 1961
4:30 o'clock p.m.

Court met pursuant to a recess.

Appearances:

(Same as before.)

5 The Clerk: 61 C 1502, application for the enforcement of a summons, etc., as to Maurice L. Davis. Return of rule to show cause.

Mr. Sanders: Good afternoon, Your Honor.

The Court: Good afternoon.

Mr. Sanders: Your Honor, we are prepared to proceed. If Your Honor desires we will put on a witness to prove up the various averments of facts in our petition.

The Court: Well, are there any facts in dispute?

Mr. Sanders: We do not believe so, Your Honor.

The Court: First of all, you haven't served the wife of the respondent Davis.

Mr. Sanders: We served her yesterday, Your Honor.

The Court: Oh.

Mr. Davis: With a summons?

Mr. Sanders: With a summons, that is correct.

Mr. Davis: But no notice of the present application.

Mr. Sanders: The situation is this; we believe that we effected a proper service.

The Court: Well, that is where you served notice to some office building and established her place of—

6 Mr. Sanders: That is correct, Your Honor. So barring that there would then be no service if that is not a proper service. That was the only service we had on her so we are not disputing that. We are prepared to proceed without her as a party to this action.

The Court: All right. Well, what do you have to prove up?

Mr. Sanders: Merely that the summons were served and that we—

Mr. Davis: On me?

Mr. Sanders: On Mr. Davis.

Mr. Davis: I will admit the summons were served on me. What else do you wish?

Mr. Sanders: The letters, the 7605-B letters which were served on you the same day, advising Mr. Davis that a second examination of his books and records was necessary.

Mr. Davis: You have shown me a series of letters.

Mr. Sanders: Yes.

Mr. Davis: All dated July 10, 1961. There are seven such letters. I will admit the delivery to me of such letters on the day of July 10, 1961. Do you want to

7 mark them as exhibits?

Mr. Sanders: Yes.

Your Honor, we would like to present these in evidence.

The Court: Well, he agrees that they may go in evidence, just have them marked.

Mr. Davis: I have no objection to having them marked as Petitioner's Exhibits.

The Court: Give them to the reporter and he can mark them.

Mr. Sanders: Would you mark them as Government's Exhibits No. 1, please—mark that Government's Group Exhibit 1 in evidence.

(Said documents, so offered and received in evidence, were marked as Government's Group Exhibit 1.)

Mr. Sanders: Your Honor, it is our position that these letters satisfy the requirement of Section 7605-B, as they represent on their face, and that is the authority for the Commissioner to once again examine the records, books and records of the taxpayer. The taxpayer admits that he has books and records and he resists on the
8 various grounds which he alleges. We think the defenses, the allegations are insufficient, There is only one issue, as we see it, and that is should he be required to produce the books and records which he admits he has.

The Court: Well, that is the reason I asked what facts are in dispute.

Mr. Davis: Have you presented your entire case then?

Mr. Sanders: Yes.

Mr. Davis: And do you rest?

Mr. Sanders: Yes.

Mr. Davis: Now, may I make a showing on behalf of the defendant, Your Honor.

The Court: Yes, sir.

Mr. Davis: The respondent, rather.

First, Mr. Sanders and I agree that he would stipulate that the instrument attached, copy of which is at-

tached as Exhibit 1 to my answer is a true copy of a communication directed to me on September 9, 1959 by the District Director of Internal Revenue in Chicago, Illinois. It has annexed to it a report of Agent Roger T. Leonard dated June 12, 1959 relating to an examination of the tax returns of myself and of Helen T.
9 Davis, my wife, for the years 1954 and 1955. Do you so stipulate, Mr. Sanders?

Mr. Sanders: Yes.

Mr. Davis: All right. Secondly, Mr. Sanders joins in the further stipulation that the instruments, a copy of which is attached to Exhibit 2 to my answer is a true copy of a protest filed with the District Director of Internal Revenue at Chicago, Illinois, on February 15, 1960. Will you so stipulate.

Mr. Sanders: Now we are stipulating to the genuineness of these documents. We are not stipulating to their admission in evidence.

Mr. Davis: I am merely asking that you stipulate to their genuineness.

Mr. Sanders: That is fine.

Mr. Davis: All right.

Now, may I be sworn, Your Honor? Will the Court swear me in?

(Whereupon Mr. Maurice L. Davis was duly sworn by the Court.)

10 Mr. Davis: My name is Maurice L. Davis. I office at 33 South Clark Street, Chicago, Illinois. My place of residence is 616 North Rush, Chicago, Illinois. I am a respondent in this cause.

On or about August 23rd—strike that out, please.

I offer in evidence the documents attached as Exhibits 1 and 2 to my answer as Exhibits 1 and 2. The genuineness of these exhibits having been stipulated to by the U. S. Attorney.

Mr. Sanders: Your Honor, at this point we object to the admission into evidence of these documents on the ground of their irrelevancy.

The defendant here is getting into the merits of his controversy, which is an altogether unrelated matter. The only issue before the Court in this proceeding is whether or not he should be compelled to produce the records which he admits that he has and not whether or not he is liable for any taxes as a matter of law.

Mr. Davis: Your Honor, these exhibits are not offered for the purpose of going into the merits of the tax liability, not in the least, but merely to show the pro-
11 ceedings had by Internal Revenue Service, the extent of the examinations made by it, the records thus far made available to it in order to show the unreasonableness, among other matters, of the present request, and this is proper under the law.

The Court: As I understand, you are proceeding under Section 7605-B?

Mr. Davis: Yes.

The Court: Is that correct?

Mr. Sanders: Not wholly, Your Honor, this is a proceeding under Section 7604.

The Court: Oh, 7604. But 7605 is the section which sets forth the conditions under which you can reexamine.

Mr. Sanders: Well; 7605-B does set forth certain conditions. The issue with respect to that section was raised by the defendant in his answer in Paragraph 12, I believe, where he said that we had not, in the petition, alleged any fact which indicated that a re-examination was warranted.

The Court: That is the only issue before us, whether or not you are justified in going ahead with this proceeding.

Mr. Davis: May I proceed, Your Honor, with the
12 other exhibits that I intend to offer? Counsel and I have stipulated to the genuineness of all the documents I intend to offer, because I left these documents with him this morning. He examined them and called me at noon and said he would stipulate. I think it would be simplest if I could offer all the documents and then perhaps we can argue the matter of admissibility at one time.

The Court: All right.

Mr. Davis: All right.

Now, Mr. Sanders, Exhibit 3, Group Exhibit 3, is a communication from Harold R. All, District Director, dated September 9, 1959, to which is attached a report by Agent Roger T. Leonard with respect to the proposed tax liability of Maurice L. Davis and Helen T. Davis.

The Court: That is Exhibit 1 attached to your answer?

Mr. Davis: No, it is a—yes, Your Honor.

Mr. Sanders: Your Honor, we are prepared to accept the genuineness of all these documents. I think they speak for themselves so I don't think it is necessary to make a recitation with respect to each one of them.

13 Mr. Davis: Very good. Then I will offer Exhibit 3, which is the document attached to which is the protest receipted for by the District Director of Internal Revenue on February 15, 1960.

Exhibit 4 is the consent fixing the limitation period on taxing for the year September 30th, 1955 of trust "A", October 1, 1952, the extension being June 30th, 1960, attached to which is a letter from the District Director of September 9, 1959 recommending—advising of an overassessment for the year September 30th, 1954 and for the year September 30th, 1955. And attached to that as part of this group exhibit is a protest filed with the District Director under date of February 15, 1960.

Exhibit 5 consists of a like series of documents in respect of Trust "B" dated October 1, 1952.

Exhibit 6, a like series of documents in respect of Trust "C" dated October 1, 1952.

Exhibit 7, a like series of documents with respect to Trust "D" dated October 1, 1952.

Exhibit 8, a like series of documents with respect to Trust "A" dated March 1, 1952.

14 Exhibit 9, a like series of documents with respect to Trust "B" dated March 1, 1952.

Exhibit 10 is a letter of transmittal to Internal Revenue Service, Appellate Division. The letter is dated August 23, 1960 and it is a letter of Altschuler, Melvoin & Glasser, marked for the attention of Joseph, Re: Maurice L. and Helen T. Davis, and purports to enclose, pursuant to a conference held August 7, 1960, agreement for dissolution of partnership of H & R Builders and financial statement of H & R Builders as of November 30, 1953.

Now Mr. Sanders and I have stipulated that such a letter was delivered to Internal Revenue Service on August 23rd, 1960, and the enclosures referred to therein were transmitted herewith.

Is that correct, Mr. Sanders?

Mr. Sanders: That is correct.

Mr. Davis: This concludes my offer of exhibits, Your Honor.

May I resume my testimony?

The Court: Yes.

Mr. Davis: A conference was held on August 7, 1960 with the Appellate Division of the Internal Revenue Service, and present at such conference were myself,

15 William Klier of the accounting firm of Altschuler, Melvoin & Glasser and the conferee.

Mr. Klier and I were asked to produce at this conference certain documents in connection with the claim of tax liability and we then and thereafter, by August 23rd, 1960 furnished to the Appellate Division of Internal Revenue Service all of the documents so requested at this conference. No other documents were requested. We furnished all that were asked for.

The conference was held following the protest filed February 15, 1960 in respect of the examination of taxpayers income tax returns for the years 1954 and 1955.

I did appear on July 24, 1961 in response to the summonses served upon me in respect of which this proceeding is initiated, and so I appeared before R. M. Soja, an officer of the Internal Revenue Service at 17 North Dearborn Street, Chicago, Illinois, and I then refused to produce any books or records or other documents because of a claim on my part of the impropriety of any demand for such documents.

With respect to the demand in connection with H & R Builders, a partnership, the partnership was dissolved and its assets were distributed after February 28, 1953 and before February 28, 1954. The fiscal year of Maurice L. Davis as trustee of Trusts "A" and "B" of March 1, 1952, ended February 28.

The Court: Aren't you going into the merits of this?

Mr. Sanders: The defendant is not only going into the merits of it, he is just reading the pleading and it is unnecessary.

Mr. Davis: This concludes my proof, Your Honor. Is there any rebuttal proof?

Mr. Sanders: We would like cross examination.

Mr. Davis: Of course.

Cross Examination by Mr. Sanders.

Q. Mr. Davis is the Internal Revenue Service investigating your tax liabilities for the years 1954 and 1955?

A. They have been so investigating these alleged liabilities for more than three years. I think the examination commenced prior to 1959, that is correct.

Q. Your answer, sir, is yes, is that correct?

A. With these qualifications, yes.

17 Q. Have you been served with summons to produce various books and records with respect to various trusts in which you served as trustee and with respect to H & R Builders, and with respect to your individual records for various years, service of which was made on July 12, 1961?

A. I was assuredly served with all the summonses described in your petition on file in this case. Service was effected on me personally on July 12, 1961 and returnable July 24, 1961, yes.

Q. Were you also served with a letter from the Regional Commissioner requesting and advising you that an additional examination of your books and records was required, such letter being issued pursuant to Section 7605-B of the Internal Revenue Code of 1954?

Mr. Davis: I object to that portion of the question which characterizes "letter."

By the Witness:

A. I was served with a letter, a copy of which was offered in evidence by you in this proceeding.

By Mr. Sanders:

Q. You admit that there was service of that letter

18 on you?

A. Of course I do. I did initially.

Q. Fine.

And would you state succinctly what your grounds for

resisting the production of the checkbooks, check stubs and bank statements of the various Trusts in question is. What is your ground for resisting the production?

A. Well, this is a matter of law and the ground is suggested by my answer. I shall be happy to restate it.

Q. Will you please, sir?

A. Yes. The statute of limitations bars all tax claims against all of the trusts in question and such bar existed from and after July 1, 1960. The period of limitations with respect to all of the trusts was extended until June 30th, 1960. The extensions appear in the record in this case and in the exhibits I offered. All tax claims in respect to all of the trusts were barred by limitations after that. And, therefore, there is no right on the part of the Internal Revenue Service to make any inquiry in respect of those records.

Q. Mr. Davis—

A. Under the circumstances outlined in my answer.

Q. Is the Internal Revenue Service investigating the liability of the trusts or your individual liability for the years in question, sir?

Mr. Davis: Well, this is argumentative, Your Honor, but if the Court wishes me to answer I shall answer.

The Court: Yes, well, there is a simple question posed here. Why don't you want to produce your records?

Mr. Davis: Your Honor, the Internal Revenue Service does not have a right to re-examine my personal records. As to my personal records, Your Honor, the statute of limitations expires this Saturday and—

The Court: On what g and—

Mr. Davis: By extension. I stipulated to extension of time for '54 and '55.

The Court: You say they do not have any right to reexamine. What do you base that on?

Mr. Davis: On the statute, Your Honor.

The Court: What part of the statute?

The Court: What part of the statute?

20 Mr. Davis: Let me read the—

The Court: 7605, isn't it?

Mr. Davis: Yes, Your Honor. Let me read this. I have it in my answer.

The Court: You set it up in your answer?

Mr. Davis: I do, Your Honor.

The Court: Yes.

Mr. Davis: The first section is—this is Section 7605:

"No taxpayer shall be subjected to unnecessary examination or investigation."

And, again:

"Only one inspection of a taxpayer's books of accounts shall be made for each taxable year, unless the taxpayer requests otherwise or unless the secretary or his delegate, after investigation, notifies the taxpayer in writing that an additional inspection is necessary."

Now, the authorities say, Your Honor, that this is not an untrammeled discretion on the part of the secre-

21 tary or his delegate, and I would like to quote from several opinions, if I may.

I think I gave you a copy of these excerpts, or did I?

Mr. Sanders: No, you did not, sir.

Mr. Davis: I did not? I see.

First, Your Honor, in 273 Fed 2d, 185, First Circuit, Lash versus Nighosian at Page 189, the Court said:

"The function of the District Courts in these cases, as we see it, is comparable to the function of the Grand Jury. It is to prevent the secretary or his delegate from going on a fishing expedition into a taxpayer's books or records for the closed years or from acting on a mere hunch or surmise, but to permit inspection as to closed years when the Court

is satisfied, meaning persuaded or content, that the official who issued the summons had a reasonable basis for his belief that the taxpayer had been guilty of fraud in a closed year."

22 And again in 170 Fed. Supplement 12—This was a case in the Northern District of Illinois, Eastern Division, Judge Sullivan at Page 14, with reference to Section 7605-B:

"The statute thus is far from giving the secretary untrammeled discretion since it is limited by all the requirements set forth. Since the secretary's discretion is limited, whether or not it has been properly exercised must be judged by the Court. The Court is not required to give approval as a rubber stamp upon the administrative subpoena without further investigation so that the Court can determine whether the secretary acted within his powers as limited by the statutes some proof must be made. The Government has the burden of showing the materiality and relevance of the proposed examination to the tax liability."

So, Your Honor, there must be a hearing and we 23 have now had a hearing and the secretary must show the materiality and relevancy of the proposed examination to the tax liability.

Now, there is no showing in this case and I do not believe any showing can be made how this present inquiry is material to my tax liability. They have had their one examination and now they want another. They must show how this other is material or relevant. The basis of the discussion, the basis of the reasonableness of the application must be shown, and there is no showing except the letter and the letter proves nothing.

Mr. Sanders: Your Honor, before resuming my cross examination here I would like to address myself briefly to these contentions raised by the defendant.

The first and obvious one is that we are not investigating the liabilities of the trusts.

The Court: We can understand that.

Mr. Sanders: We are investigating the individual's liabilities.

24 Secondly, the various trusts involved have filed claims for refunds for all of these years in question so that this again places in issue the years for the trusts so that the Commissioner in order to pass on the claims has to have these records. That is another point.

The third point, perhaps the most telling one, is that it is not necessary to show probable cause in connection with this particular investigation because there has been no finding that the years are barred. All we know is that a certain period of time has elapsed. Without a showing of fraud for example it may be a six-year statute of limitations rather than a three-year statute. Without examining the books and records, Your Honor, it is impossible to determine the very first question: whether in fact the statute of limitations has run. This is all apart from the question of whether fraud is involved in connection with this last point.

25 The Court: Where fraud is involved you have a six-year statute.

Mr. Davis: Is there an allegation of fraud?

Mr. Sanders: There has been no allegation of fraud in this case, Your Honor, but there is an unlimited statute of limitations if fraud were the case.

The Court: You don't allege fraud?

Mr. Davis: No allegation is made as to fraud.

Mr. Sanders: We would like to call to the Court's attention the case of Foster versus the United States, and this is 265 Fed 2d 183, and, very briefly, the appellant in objecting to enforcement asserts that the examination sought was unnecessary and unreasonable because

the three-year statute of limitations had run so that assessments on the years under investigation had already been barred. The summons and order under 7602 and 7604, they insist, may issue only on a showing of
26 probable cause to believe that the years of which investigation is sought are open years to which the statute of limitations has not run. As we pointed out in United States versus United Distillers Products Corporation, the general three-year statute of limitations was extended to five years by Internal Revenue Code 275, which is Section 6501-E now in cases in which the understatement of gross income in return exceed 1 25 per cent and no time limitation whatever is applicable in cases of fraudulent returns.

27 We adhere to the position which we took—and this is the Second Circuit, Your Honor, in the United Distillers case and hold that an examination, whether of a taxpayer or a third party is not unnecessary or unreasonable within the meaning of the fourth amendment merely because three years or five years or any longer specified period of time has elapsed since the tax return on the investigation was filed.

The examination provided by 7602 is for the expressly stated purpose not only of ascertaining the correctness of any return but also for determining the liability of any persons for any Internal Revenue Tax.

The Commissioner is therefore entitled to the examination if it may shed light on whether a liability still exists or whether it has been time barred.

28 Your Honor, at this point I would like to pursue the cross examination very briefly.

By Mr. Sanders:

Q. Mr. Davis, will you state whether or not claims for refunds have been filed on behalf of all of the trusts in issue in this proceeding for the various years which you allege are now barred by the statute of limitations?

A. There were protective claims filed at the request of the Internal Revenue Service.

Q. Mr. Davis, will you state whether you have in your possession—

A. However, I don't have these claims with me because nothing with reference to them was mentioned in your petition. Had I been advised—

Q. They are not in issue, Mr. Davis.

A. Had I been advised they were material, I could have brought in the copies but I haven't because there was nothing in your petition concerning them.

Q. The next question, Mr. Davis; do you have in your possession any of the required books and records which the summons requested?

A. Let me look at a copy of the summons and I can tell you.

Do you have a copy?

Q. Yes, I do.

Specifically, with respect to your liability as an individual?

A. Shall I say what I have and what I don't have, going down the list?

Q. Yes, will you please.

A. Item 1 is Cash Receipts and Disbursements Journal—

Q. I will read them and you can give a response. Will that be satisfactory?

A. Yes.

Q. Cash Receipts and Disbursements Journal?

A. I maintain no such record. I am in a law practice, in a partnership. The law firm is known as Hoffman & Davis and I do not maintain any Cash Receipts and Disbursements.

Q. Mr. Davis, so we may preserve the Court's time, I

will ask you whether you have the books and will you simply state yes or no, please.

Sales Journal?

A. I maintain no such journal. I do not sell.

Q. General Journal?

A. I have no such book record.

Q. General Ledger?

A. No, I have none.

Q. Subsidiary Ledger?

A. None.

Q. Audit Reports?

A. No.

Q. Bank Statements?

A. Yes.

Q. Cancelled Checks?

A. Certainly.

Q. Bank Deposit Slips?

A. I do not have Bank Deposit Slips because the deposit slips would either be in the possession of the bank of deposit, and I have several banks of deposit; one is the First National Bank of Chicago, another is the American National Bank & Trust Company of Chicago, and they would have deposit slips. I would not.

Q. The question is merely whether you have them and your answer is no?

A. I don't.

Q. Vouchers, Notes and Invoices relating to the income tax liability of yourself and your wife?

A. I am aware of no such records that I would have.

Q. With respect to Trust "A" dated March 1, 1952, do you have a copy of the partnership agreement for the H & R Builders partnership which Edward Hoffman, Haskell Richards and Maurice L. Davis as trustee under Trust "A" dated March 1, 1952, and Maurice L. Davis

under Trust "B" dated March 1, 1952, were members; do you have copies of those partnership agreements?

Mr. Davis: I object to this question, Your Honor, because this question now pertains to records of a trust and income tax claims against that trust for the particular years in question are barred by limitation from after June 30th, 1960, and I submit that no inquiry may be made with respect to records of the trust because of the bar of statute limitations.

The Court: Is that true?

Mr. Sanders: That is not true, Your Honor. First of all, the defendant is in error. This does not involve
32 a trust. This is a partnership, H. & R Builders.

Mr. Davis: This subpoena is directed to me as Trustee, is it not?

Mr. Sanders: Yes, but do you have the partnership records?

Mr. Davis: Well, I have made my objection, Your Honor.

The summons from which Counsel is reading is directed to me as Trustee under trust—

Mr. Sanders: Trust "A" dated March 1, 1952.

The Court: What difference does that make how it is directed to you? They are trying to get some information here about individual liability, as I understand, is that correct?

Mr. Sanders: That is correct.

The Court: And the fact that they have something to do with the trust is something which is not quite decisive of the whole case.

Mr. Davis: I am not individually a partner in that partnership, Your Honor.

33 Mr. Sanders: Were you ever individually a partner in that partnership, Mr. Davis?

Mr. Davis: You asked me that question at our conference at noon today and you suggested that I was—

Mr. Sanders: Will you please answer? You are being cross examined, sir. Will you answer yes or no?

Mr. Davis: I can't recall because I haven't looked at the file. I may have been but I can't recall it.

By Mr. Sanders:

Q. Mr. Davis, will you examine this document which purports to be a memorandum of the agreement relating to a partnership entitled H & R Builders?

A. I have examined it.

Mr. Sanders: Your Honor, we represent that this memorandum of agreement is a memorandum relating to the partnership wherein the individual Maurice L. Davis was substituted by these two trusts, Trust "A" and Trust "B", dated March 1, 1952, and his partnership interest, and the memorandum relates that three individuals formed a partnership prior to this substitution. I am submitting it to Mr. Davis to refresh his recollection as to whether or not in fact he was—

Mr. Davis: I have examined the document dated March 5th, 1952. It is a photostat, the original bears my signature. It refreshes my recollection. I was originally a partner in that partnership.

By Mr. Sanders:

Q. Now, sir, on March 5th, 1952, as the memorandum recites, there was a substitution wherein your individual partnership interest was transferred to two trusts, is that correct, Trust "A" and Trust "B", March 1, 1952?

A. If the document so shows, and I believe it does, that would be correct.

Q. Well, do you so state, sir?

A. May I examine it? I didn't read all of it. It is a three-page instrument.

Q. It was your instrument, sir, was it, not, sir?

35 A. Let me read it.

This instrument shows that the joint venture originally created was discontinued and terminated and a new joint venture was created. It also shows that I desired to transfer my interest individually to myself as trustee under Trusts "A" and "B" of March 1, 1952, and there was such a transfer made.

Q. Now, then, sir, resuming the questioning again, do you have in your possession a copy of the partnership agreement for H & R Builders?

Mr. Davis: Does the Court rule that I should answer these questions?

The Court: Yes.

Mr. Davis: If the Court so rules.

By Mr. Davis:

A. I do have such copies, yes.

By Mr. Sanders:

Q. Do you have copies of the partnership, all the partnership returns filed by H & R Builders from the date of organization to the date of dissolution?

A. I should have copies of the income tax returns. I am not certain, but I should have them.

36 Q. Do you have from the date of organization to the date of dissolution for H & R Buildings the Cash Receipts and Disbursements Journal?

A. I do not know if I have them. I would have to make an inquiry of the—

Q. Did you have them at one time, sir?

A. Undoubtedly I had them at one time, but I would have to inquire of the accountant who handles the books and determine where they are, who has them or what disposition was made of them.

Q. And who would the accountant be, sir?

A. Their accounting firm would be Kerman Alport & Company.

Q. Is it correct to state that these books and records are either in your possession or in their possession?

A. Unless they are in the possession of one of the other parties to the partnership. The probability is they would be in my possession or the Kerman office, one or the other.

Q. Do you have control over those records?

A. I could certainly produce them if I were properly ordered to produce them. To that extent, I certainly have control.

Q. Does the same hold true as to the status of the Sales Journal?

A. I am not aware there were any Sales Journals or General Journals.

Q. General Ledger?

A. I am not familiar with the bookkeeping system so I can't tell you.

Q. Subsidiary Ledger?

A. I am not aware that there are any such.

Q. Audit Reports for H & R Builders?

A. There may have been—probably no Audit Reports for H & R Builders.

Q. Can you answer more specifically? Were there or were there not?

A. I doubt if there were. I don't know, but if there are any, I would certainly have copies.

Q. Bank Statements, Cancelled Checks?

A. I most assuredly would have the bank statements and cancelled checks—I should have them. These records now are nine years old. They were in my possession at one time and I know of no reason for their having been discarded or destroyed.

Q. Bank Deposit Slips?

A. I think the banks of deposit would have those.

38 Q. Vouchers, Notes and Invoices relating to entries in the books of original entry of H & R Builders, Vouchers, Notes and Invoices?

A. I do not know.

Q. Your original records?

A. Whatever original records there are probably I would have them, but I don't know if I could describe it in the way you have described it in your summons.

The Court: Are you going to go through each one of these?

Mr. Sanders: No, Your Honor. I would like to dispose of the six trusts summarily and the individual summons and this one partnership issue separately. The other six are all identical and I would just like the record to reflect whether, in fact, Mr. Davis has these records. I think that he has already indicated that he does not possess the records—this is for Trust "A" and "B", March 1, 1952, and for Trust "A", "B", "C" and "D", October 1, 1952.

By Mr. Sanders:

Q. Is it correct, Mr. Davis, that you do not have

39 the cash receipts and the disbursements journals, sales journal, general journals, general ledger, subsidiary ledger for the trusts, for all the foregoing trusts?

A. That is correct, sir.

Q. Do you have audit reports for those trusts?

A. There may be audit reports but I don't know if they were prepared for those early years. I know in recent years there have been audit reports prepared by the accounting firm in respect of the trust income and operations, but I don't know if they were prepared for the earlier years. I can't say.

Q. Bank Statements?

A. Yes, of course.

Q. For all of them. Cancelled Checks?

A. Certainly.

Q. Bank Deposit Slips?

A. Those would be with the banks of deposit.

Q. Vouchers, Notes and Invoices relating to the income tax liability of the above-named or foregoing trusts?

A. I am not aware of any such items.

Q. All right, fine.

40 Mr. Sanders: Your Honor, finally, the defendant and the Government have stipulated and do so stipulate now to the genuineness of the summons which are in the pleadings; that is, that they were served on the—

Mr. Davis: I admit that in my answer, sir.

Mr. Sanders: Fine.

Mr. Davis: No proof is needed if I admit it.

Mr. Sanders: That is our case, Your Honor.

We request that the Court order the defendant to produce such records as he has pursuant to the mandate of the summons.

The Court: What about this question of statute of limitations?

Mr. Sanders: The statute of limitations does not apply to the individual, Your Honor, because he has executed consents to September 30th, 1961, for the years 1954 and 1955 as an individual.

The Court: It could apply to these different Trusts?

Mr. Sanders: No, Your Honor. Section 7602, Sub-Paragraphs 2 and 3 indicate that the Government can require third persons, and these Trusts stand as third persons.

41 The Court: I understand that. You are not proceeding against—

Mr. Sanders: That is correct. None of the cases cited by the defendant apply to third party records, Your Honor, and it is an inapposite or inappropriate objection

to make that the statute of limitation bars the investigation because the investigation is not respecting the trusts, not respecting the partnership, but only with respect to the individual.

The Court: And what do you say about his further objection that you have made no showing here to the necessity of it?

Mr. Sanders: Your Honor, no such showing—

The Court: Of this re-examination?

Mr. Sanders: No such showing is required. On that point, Your Honor, first no such showing is required. However, the letters which were introduced as Government's Exhibit No. 1, which authorized a subsequent examination of taxpayers' books and records are sufficient for that purpose.

The Court: You say they authorize. What do you mean by that?

Mr. Sanders: Well, I misstated myself. They indicate that another examination of the taxpayers books and records is required, and to the extent that--

42 The Court: You say it will be necessary before they can close out these—

Mr. Sanders: How is that, Your Honor?

The Court: They say in this letter, in substance, "It will be necessary before final closing of the case."

Mr. Sanders: Yes, that is correct.

The Court: That is the only reason you want the examination, according to this letter?

Mr. Sanders: That is correct, only for the individual for the years 1954 and 1955. That is all that is involved in this proceeding, Your Honor, and our petition so alleges that the Internal Revenue is examining the tax liability of Maurice L. and Helen T. Davis, not of the trust.

As a matter of fact, the defendant has in his exhibits the examinations which have been made so far indicate that there are refunds to be granted with respect to the trusts, not liabilities, refunds. And there is one further point, that there is a singular omission in one of the exhibits and that is, that there is another Form 870, which is the notice of proposed assessment and deficiency which asserts the liability for deficiency in taxes against the individual and that is not in there.

43 The Court: Why do you say, Mr. Davis, you shouldn't produce these records and documents?

Mr. Davis: Your Honor, as the Court can see from an examination of the exhibits I have offered and from an examination of the exhibits attached to the answer I filed, there have been exhaustive examinations over a period of years by the Internal Revenue Service of my records, and the statute contemplates only one examination, but it contemplates a second examination only under certain conditions and the law is that the burden rests upon the Department of Internal Revenue to show the materiality and relevancy of this additional examination. And I say that the mere declaration in a letter to me is not proof to this Court of the necessity of the examination.

This is the position which I must take and do take, Your Honor.

The Court: Yes.

Mr. Sanders: Your Honor, on that point, again the defendant blurs or misconstrues, first of all, Section 7605 —7605-B. In reality, it is in two parts. It says that no taxpayer shall be required to undergo unnecessary examination. And there are cases, Your Honor, Para-

44 mount Jewelry in the Second Circuit, in re: Colton in the Second Circuit, which indicate that a taxpayer can be subjected to a thousand investigations if

they are of necessity without any letter, without any showing of probable cause or any such thing. That is the first point.

The second part of 7605-B relates to examination of the taxpayer's books and records; in that case where the Government seeks to examine the taxpayer's books and records they are entitled to only one examination for any year. However, if they—if a second examination is necessary, they then must issue this letter. And there are also cases which indicate that the letter is presumptively correct, that the facts it recites are presumed to be so unless the taxpayer defendant can show that they are in error.

Mr. Davis: If the Court please, if Counsel's position were correct, then all that the United States Attorney need do is file his petition, show service of summons and the function of this Court is merely to stamp approval on whatever the United States Attorney asks for. This is not, as I understand the law.

Mr. Sanders: Nor I, Your Honor.

45 Mr. Davis: This Court, Your Honor, has the right, the power, the authority and the duty to determine whether or not the examinations are necessary, and mere declaration, mere assertion is not proof.

I have heard no proof offered on behalf of Internal Revenue Service to establish that the additional examinations sought are necessary, and on this I must rest.

The Court: Well,—

Mr. Davis: I have been subjected to years of inquiry here and I think that it is time that I show some resistance to the actions of Internal Revenue Service.

The Court: Well, the petition here is asking that a writ of attachment issue in the event that you do not comply with the request contained in the summonses that have been served upon you.

Mr. Sanders: That is the first prayer, Your Honor, and it is really addressed to a situation where when the defendant does not respond to the petition. Here, since he has responded, we have no desire to get a body attachment against him. We are more interested, Your
46 Honor, in the second request, the second prayer. It says that the Court issue its order that respondent Maurice L. and Helen T. Davis, individuals, and Maurice L. Davis in his various trust capacities, must comply with the summonses issued by the Internal Revenue Service.

We will be content with a direction from the Court ordering compliance.

The Court: Well, I am going to enter an order in compliance with the request made in the petition filed here, but I want to enter it in such a fashion that you will have a record upon which you can make a proper appeal. So you better draft your order and bring it in here and then Mr. Davis will have such time as may be necessary to provide such appellate procedures he wants to pursue.

When will you bring that in here?

Mr. Sanders: I can have it in tomorrow morning, Your Honor.

Mr. Davis: May I see it before it is presented?

The Court: Oh, yes.

Mr. Sanders: Yes.

Mr. Davis: That would be nice.

Mr. Sanders: We always accorded you that consideration, Mr. Davis.

Mr. Davis: Tomorrow morning is such a short time. Would you like to make it Thursday morning?

47 Mr. Sanders: No, tomorrow morning is fine.

The Court: We will make it Thursday morning.

Mr. Sanders: Thursday morning, Your Honor?

The Court: That will give you time to get your order ready and give him time to look at it and decide what he wants to do.

Mr. Sanders: Fine, Your Honor.

Is there a time limitation on this directing compliance within so many days?

The Court: Yes, we will put a reasonable time on it.

Mr. Sanders: Thirty days?

The Court: Thirty days.

Mr. Sanders: Well, I beg your pardon, Your Honor, the statute of limitations expires Saturday. Could we have the order read that he be required to produce the various books and records in his possession by Friday, September 29th? Would that be a reasonable request, Your Honor.

The Court: What statute is about to expire?

Mr. Sanders: The statute of limitations on the individuals Maurice L. and Helen T. Davis for years 1954 and 1955, and it expires on Saturday, September 30th, Your Honor.

The Court: Well—

Mr. Davis: How does that relate to the discovery sought in this proceeding?

Mr. Sanders: That is what it is all about, Mr. Davis.

Mr. Davis: You mean you don't know how to frame your ninety-day letter unless you have discovery. Is that what you mean to say?

Mr. Sanders: That is the purpose of this discovery proceeding, to ascertain your tax liability.

The Court: What is tomorrow? Wednesday?

Mr. Sanders: That is correct, Your Honor, the 27th.

The Court: All right. Well, you had better bring your papers in tomorrow at two o'clock.

Mr. Sanders: Bring them in tomorrow at two o'clock.

The Court: Yes, and it will suggest that they comply with it by—what is the date?

Mr. Sanders: By Friday morning, the 29th.

The Court: All right.

Mr. Sanders: Thank you, Your Honor.

Your Honor, if the defendant would extend the statute of limitations, perhaps there might be a more agreeable settlement all the way around. We could extend the
49 statute of limitations for six months or for three months and then perhaps we could extend the—

The Court: Well, ask him. You are close to him.

Mr. Davis: I have run out of extensions.

Mr. Sanders: He refuses.

Thank you, Your Honor.

The Court: All right.

(Whereupon were all the proceedings had and taken in the above-entitled matter on the day above described.)

50 IN THE UNITED STATES DISTRICT COURT

(Caption—No. 61 C 1502)

CERTIFICATE

I hereby certify the the above and foregoing 49 consecutively numbered pages is a full, true and accurate transcript of the original shorthand notes taken at the hearing of the above-entitled case before the Honorable Michael La Igoe, on Tuesday, September 26, 1961.

/s/ Everett H. Hughes
Official Court Reporter
U. S. District Court
Northern District of Illinois

October 30, 1961

IN THE UNITED STATES DISTRICT COURT
For The Northern District Of Illinois
Eastern Division

In the Matter of the Application for Enforcement of Summonses Issued by the Commissioner of Internal Revenue to Maurice L. and Helen T. Davis, Individually; and Maurice L. Davis, as Trustee of Trusts "A" and "B" dated March 1, 1952, and Trusts "A", "B", "C" and "D" dated October 1, 1952.	No. 61 C 1502

PETITIONER-APPELLEE'S EXHIBIT
(Filed Nov. 14 1961)

Attached hereto is Petitioner's Group Exhibit No. "1", admitted into evidence in the above captioned matter on September 26, 1961. This Exhibit, consisting of seven letters, issued pursuant to Section 7605(b) of the Internal Revenue Code of 1954—addressed to the various respondents herein and signed by the Acting Regional Commissioner of Internal Revenue, are submitted herewith for the purpose of completing the Record on Appeal in the captioned matter.

/s/ James P. O'Brien
James P. O'Brien,
United States Attorney.

HTS/aek

GOVERNMENT'S GROUP EXHIBIT 1
(Filed Nov 14 1961)

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
P. O. Box 1144
Chicago 90, Illinois
July 10, 1961

Mr. Maurice L. Davis and
Mrs. Helen T. Davis
33 South Clark Street
Chicago 3, Illinois

Type of tax: Income
Taxable year(s): 1954, 1955

Dear Mr. and Mrs. Davis:

Although it is the practice of the Internal Revenue Service to make as few inspections as possible of taxpayers' books and records, it will be necessary, before finally closing your case, to make a re-examination of your books and records for the above taxable year(s) in order to properly verify your return(s).

Your cooperation in permitting our representative access to all of your books and records will be appreciated.

This notice is sent in compliance with Section 7605(b) of the Internal Revenue Code.

Very truly yours,
(Signed) W. A. Collawn
W. A. Collawn
Acting Regional Commissioner

cc—Case file

Served on Mr. Maurice L. Davis at 9:50 A.M. of 7/12/61
in Room 1335 of 33 S. Clark Street—Chicago 3, Illinois
/s/ Romuald M. Soja
Int Rev Agt
/s/ Roger T. Leonard
I/R/A

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
P. O. Box 1144
Chicago 90, Illinois
July 10, 1961

Type of tax: Income
Taxable year(s): ending:
2/28/55
2/29/56

Trust "A" dated 3-1-52
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Dear Mr. Davis:

Although it is the practice of the Internal Revenue Service to make as few inspections as possible of taxpayers' books and records, it will be necessary, before finally closing your case, to make a re-examination of your books and records for the above taxable year(s) in order to properly verify your return(s).

Your cooperation in permitting our representative access to all of your books and records will be appreciated.

This notice is sent in compliance with Section 7605(b) of the Internal Revenue Code.

Very truly yours,
(Signed) W. A. Collawn
W. A. Collawn
Acting Regional Commissioner

cc—Case file

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/s/ Romuald M. Soja
Int Rev Agt
/s/ Roger T. Leonard
I/R/A

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
P. O. Box 1144
Chicago 90, Illinois
July 10, 1961

Type of tax: Income
Taxable year(s) ending
2/28/55
2/29/56

Trust "B" dated 3-1-52
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Dear Mr. Davis:

Although it is the practice of the Internal Revenue Service to make as few inspections as possible of taxpayers' books and records, it will be necessary, before finally closing your case, to make a re-examination of your books and records for the above taxable year(s) in order to properly verify your return(s).

Your cooperation in permitting our representative access to all of your books and records will be appreciated. This notice is sent in compliance with Section 7605(b) of the Internal Revenue Code.

Very truly yours,
(Signed) W. A. Collawn
W. A. Collawn
Acting Regional Commissioner

cc—Case file

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/s/ Romuald M. Soja
Int Rev Agt
/s/ Roger T. Leonard
I/R/A

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
P. O. Box 1144
Chicago 90, Illinois
July 10, 1961

Type of tax: Income
Taxable year(s): ending:
9/30/54
9/30/55

Trust "A" dated 10-1-52
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Dear Mr. Davis:

Although it is the practice of the Internal Revenue Service to make as few inspections as possible of taxpayers' books and records, it will be necessary, before finally closing your case, to make a re-examination of your books and

records for the above taxable year(s) in order to properly verify your return(s).

Your cooperation in permitting our representative access to all of your books and records will be appreciated.

This notice is sent in compliance with Section 7605(b) of the Internal Revenue Code.

Very truly yours,
(Signed) W. A. Collawn
W. A. Collawn
Acting Regional Commissioner

cc—Case file

Served on Mr. Maurice L. Davis at 9:50 A.M. of 7/12/61 in Room 1335 of 33 S. Clark Street—Chicago 3, Illinois

/s/ Romuald M. Soja
Int Rev Agt
/s/ Roger T. Leonard
I/R/A

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
P. O. Box 1144
Chicago 90, Illinois
July 10, 1961

Type of tax: Income
Taxable year(s): ending
9/30/54
9/30/55

Trust "B" dated 10-1-52
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Dear Mr. Davis:

Although it is the practice of the Internal Revenue Service to make as few inspections as possible of taxpayers' books and records, it will be necessary, before finally closing your case, to make a re-examination of your books and records for the above taxable year(s) in order to properly verify your return(s).

Your cooperation in permitting our representative access to all of your books and records will be appreciated.

This notice is sent in compliance with Section 7605(b) of the Internal Revenue Code.

Very truly yours,
(Signed) W. A. Collawn
W. A. Collawn
Acting Regional Commissioner

cc—Case file

Served on Mr. Maurice L. Davis at 9:50 A.M. of 7/12/61 in Room 1335 of 33 S. Clark Street—Chicago 3, Illinois

/s/ Romuald M. Soja
Int Rev Agt

/s/ Roger T. Leonard
I/R/A

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
P. O. Box 1144
Chicago 90, Illinois
July 10, 1961

Type of tax: Income
Taxable year(s) ending
9/30/54
9/30/55

Trust "C" dated 10-1-52
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Dear Mr. Davis:

Although it is the practice of the Internal Revenue Service to make as few inspections as possible of taxpayers' books and records, it will be necessary, before finally closing your case, to make a re-examination of your books and records for the above taxable year(s) in order to properly verify your return(s).

Your cooperation in permitting our representative access to all of your books and records will be appreciated. This notice is sent in compliance with Section 7605(b) of the Internal Revenue Code.

Very truly yours,
(Signed) W. A. Collawn
W. A. Collawn
Acting Regional Commissioner

cc—Case file

Served on Mr. Maurice L. Davis at 9:50 A.M. of 7/21/61 in Room 1335 of 33 S. Clark Street—Chicago 3, Illinois
/s/ Romauld M. Soja
Int Rev Agt
/s/ Roger T. Leonard
I/R/A

U. S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
P. O. Box 1144
Chicago 90, Illinois
July 10, 1961

Type of tax: Income
Taxable year(s): ending
9/30/54
9/30/55

Trust "D" dated 10-1-52
Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Dear Mr. Davis:

Although it is the practice of the Internal Revenue Service to make as few inspections as possible of taxpayers' books and records, it will be necessary, before finally closing your case, to make a re-examination of your books and records for the above taxable year(s) in order to properly verify your return(s).

Your cooperation in permitting our representative access to all of your books and records will be appreciated.

This notice is sent in compliance with Section 7605(b) of the Internal Revenue Code.

Very truly yours,
(Signed) W. A. Collawn
W. A. Collawn
Acting Regional Commissioner

cc—Case file

Served on Mr. Maurice L. Davis at 9:50 A.M. of 7/12/61 in Room 1335 of 33 S. Clark Street—Chicago 3, Illinois

/s/ Romuald M. Soja
Int Rev Agt
/s/ Roger T. Leonard
I/R/A

EXHIBIT 2

BEFORE THE DISTRICT DIRECTOR OF INTERNAL REVENUE
Audit Division, At Chicago, Illinois

In The Matter Of Maurice L. and Helen A. Davis Chicago, Illinois	Proposed Deficiency in Income Taxes for the Calendar Years 1954 and 1955.

PROTEST

(Received Feb 15 1960)

District Director of Internal Revenue,
Audit Division,
17 North Dearborn Street,
Chicago 2, Illinois.

Sir:

Receipt is hereby acknowledged of a letter dated September 9, 1959, addressed to the above-named taxpayers, submitting a report by Internal Revenue Agent Roger T. Leonard under date of June 12, 1959, relating to an examination of taxpayers' income tax returns for the years 1954 and 1955. This report proposes deficiencies in income tax for those years in the respective amounts of $24,123.46 and $22,805.13.

The taxpayers do not acquiesce in the proposed deficiencies, but, on the contrary, protest against the same, and, in support of their protest, allege and state as follows:

(a) The names and address of the taxpayers are:
Maurice L. and Helen T. Davis,
33 South Clark Street,
Chicago 3, Illinois.

(b) The letter advising of the Examiner's findings was dated September 9, 1959, and bears no identifying symbols.

(c) The taxable periods involved are the calendar years 1954 and 1955.

(d) The finding to which the taxpayers take exception is that the distributive share of six trusts' income from the partnerships of Harwood Homes and Summerfield Homes be included in the income of the taxpayers.

(e) The grounds upon which the taxpayer relies in connection with the exception taken are as follows:

The Examining Officer proposes to include in the taxable income of the taxpayers for the years 1954 and 1955, the income which was earned and reported by the following trusts as their distributive shares of the partnership incomes of Harwood Homes and Summerfield Homes, of which they are partners:

	Year 1954	Year 1955
Trust "A" of 3/1/52	$ 6,565.24	$ 6,206.56
Trust "B" of 3/1/52	6,565.24	6,206.56
Trust "A" of 10/1/52	6,221.88	6,318.55
Trust "B" of 10/1/52	6,221.88	6,318.54
Trust "C" of 10/1/52	6,221.88	6,318.53
Trust "D" of 10/1/52	6,221.88	6,318.53
	$ 38,018.00	$ 37,687.27

Concurrently with the examination of the instant taxpayers for the years 1954 and 1955, a review of the income tax returns of Trusts "A" and "B" of 3/1/52, was made for the fiscal years ended February 28, 1955, and February 29, 1956, and Trusts "A", "B", "C" and "D" of 10/1/52, for the fiscal years ended September 30, 1954, and September 30, 1955. The income indicated above for

the respective trusts, which is now being proposed to be included in the income of the instant taxpayers, was eliminated in the examination of the trust returns for the fiscal years indicated above and a refund recommended to each of the trusts for the respective years involved for the full amount of the tax paid by these trusts.

There is being filed concurrently with this protest, protests on behalf of the above-mentioned trusts.

On August 11, 1953, the partnership of Harwood Homes was formed and each of the trusts mentioned above made substantial capital investments, and under the terms of the partnership agreement, were entitled to seven and one-half per cent (7½%) each of the net profits. The partnership elected to file its tax returns on a fiscal year ending May 31st. The first return filed by the partnership of Harwood Homes was for the period from August 11, 1953, to May 31, 1954, and each of the trusts picked up its distributive share of the income of Harwood Homes in its return, viz.: Trusts "A" and "B" of 3/1/52 in their fiscal year ended February 28, 1955, and Trusts "A", "B", "C" and "D" of 10/1/52, in their fiscal year ended September 30, 1954. For the fiscal year of Harwood Homes ended May 31, 1955, Trusts "A" and "B" of 3/1/52, reported their distributive shares of the profits in their returns for the fiscal year ended February 29, 1956, and Trusts "A", "B", "C" and "D" of 10/1/52, reported their distributive shares in their returns for the fiscal year ended September 30, 1955.

On October 15, 1953, the partnership of Summerfield Homes was formed and each of the Trusts mentioned above made substantial capital investments, and under the terms of the partnership agreement, were entitled to eight and one-third per cent (8⅓%) each of the net profits. The partnership elected a fiscal year ending September 30th

to file its tax returns. The first return filed by the partnership of Summerfield Homes was for the period from October 15, 1953, to September 30, 1954, and each of the Trusts picked up its distributive share of the income of Summerfield Homes in its return, viz.: Trusts "A" and "B" of 3/1/52, in their fiscal year ended February 28, 1955, and Trusts "A", "B", "C" and "D" of 10/1/52, in their fiscal year ended September 30, 1954. For the fiscal year of Summerfield Homes ended September 30, 1955, Trusts "A" and "B" of 3/1/52, reported their distributive shares of the profits in their returns for the fiscal year ended February 29, 1956, and Trusts "A", "B", "C" and "D" of 10/1/52, reported their distributive shares in their returns for the fiscal year ended September 30, 1955.

Trusts "A" and "B" were created under a trust agreement dated March 1, 1952, by Morris A. Sommers, as Grantor, and Maurice L. Davis, as Trustee, for the benefit of David A. Davis and Shelley G. Davis (sons of the taxpayers). Trusts "A", "B", "C" and "D" were created under trust agreement dated October 1, 1952, by Nathan and Lillian Davis, as Grantors, and Maurice L. Davis, as Trustee, for the benefit of David A. Davis and Shelley G. Davis (sons of the taxpayers). Nathan and Lillian Davis are grandparents of the beneficiaries and Morris A. Sommers is not a blood relative of the beneficiaries but is a first cousin of the beneficiaries by marriage. David A. Davis and Shelley G. Davis, beneficiaries under the various trusts, were born on October 2, 1931, and April 16, 1935, respectively.

In his report, the Examining Officer attributes as his reasons for the inclusion of the partnership income to the instant taxpayers on the basis of the following:

(1) That an anticipatory arrangement was made to divert the assigned income of the taxpayers into a much lower tax bracket to avoid the correct tax liability.

(2) That in form six separate taxable entities were created, but that in substance the income of these entities was that of the taxpayers.

The Examining Officer's contention that there was an anticipatory arrangement to divert the income of the partnerships from the taxpayers to various trusts, of which Maurice L. Davis was the Trustee, but not the Grantor, is without merit. The various trusts had contributed substantial capital to the partnerships in which they were partners. Therefore, the trusts were the actual owners of their capital interests, and, as such, were taxable on the partnership income attributable thereto. The fact that Maurice L. Davis was Trustee of the various trusts did not make him the owner personally of the capital interests of the partnerships, and, therefore, the income produced by the partnerships and attributable to the trusts was not his personal income. Therefore, the taxpayers could never have been in a position to assign income which was not theirs in the first instance.

The Examining Officer recognized that the partnerships of Harwood Homes and Summerfield Homes are bona fide entities. His only objection is that the net income of these partnerships should be distributed in a different manner than provided for in the partnership agreements. He takes the position that income attributable to the various trusts of which Mr. Davis is Trustee, but not Grantor, should be the income of Maurice L. Davis, since he acted as Trustee for these trusts without a fee. Further, that Mr. Davis was the one who produced the income and was not compensated. Mr. Davis is the Trustee under the trust agreements of these various trusts and acts in that capacity and performs the duties as Trustee as required by such agreements. The partnerships are engaged in the business of constructing and selling homes. Mr. Davis is engaged, full

time, in the practice of law. He does not engage either in the construction or sale phases of the partnerships' businesses. The law firm of Hoffman & Davis, of which Mr. Davis is a partner, handles the legal work for the partnerships; and all such work is adequately paid for.

Attention is directed to the fact that the trusts involved herein were all created prior to the formation of the partnerships involved herein. Each of the trusts had made capital contributions to the partnerships and these trusts were the initial partners upon the formation of the partnerships. There never was a transfer of the partnerships' interests by Maurice L. Davis to any of these trusts. The investment in the partnerships in which the trusts were partners originated from funds belonging to the trusts to which the taxpayers had made no contributions whatsoever. The services, as rendered by Maurice L. Davis to the trust, were rendered only in his capacity as Trustee. As Trustee he owed a duty to the trusts to administer their affairs to the best of his ability. The Examining Officer's contention that these trusts were created and served a purpose in form only and not in substance is without foundation. The Clifford case, and other cases upon which the Examining Officer relies, are wholly inapplicable herein. In those cases where the Clifford rule applied, the taxpayers were the grantors of the trusts and transferred interests in property and businesses in which they individually had been engaged. In those cases, the Courts held that the income was taxable to the grantors. In the instant case, the taxpayers are neither the grantors nor the transferors of any interest in property or businesses on which they could have realized taxable income. The only time that a person other than the grantor could be taxed on income of a trust is where there is a power exercisable solely by such person to vest the corpus or the

income of any portion of the testamentary or inter vivos trust in himself. He then would be treated as the owner of any portion of the trust over which he has a power exercisable solely by himself to vest corpus or income in himself. Even where a person other than the grantor has the power to withdraw a limited amount of the corpus each year, and no withdrawal is made, there is doubt under the present law whether there is any tax consequence to such a person. In the instant case, the Trustee, who was other than the grantor of the various trusts, had no power exercisable solely by himself to vest corpus or income in himself.

Accordingly, it is contended that, under the facts and the law, the position of the Examining Officer is untenable.

(f) The taxpayer requests that, if this protest is not sustained, a hearing be had in this case. It is further requested that a notice of said hearing be furnished to the undersigned representatives to whom duly executed power of attorney has been issued.

Respectfully submitted,
Maurice L. Davis
Taxpayer

VERIFICATION

State of Illinois
County of Cook } SS.

Maurice L. Davis, being first duly sworn, says that he is one of the taxpayers above named; that he has read the foregoing protest and the contents thereof, and is familiar with the statements contained therein; and that the facts stated therein are true to the best of his knowledge, information and belief.

Maurice L. Davis

Subscribed and sworn to before me,
a notary public, this .... day of
February 1960.

.....

Notary Public
My commission expires .....

STATEMENT BY THE REPRESENTATIVE

The foregoing protest was prepared by the undersigned representative at the request and instructions of the taxpayers, and while the facts alleged are not known personally to the representative, they were obtained from information and sources believed to be reliable.

William Klier

Altschuler, Melvoin and Glasser,
110 South Dearborn Street,
Chicago 3, Illinois.
February 15, 1960.

EXHIBIT 3

(Same as Exhibit 1 to Answer of Maurice L. Davis)

(Filed Nov 16 1961)

(Letterhead of)
U. S. TREASURY DEPARTMENT
Sep 9 1959

Messrs. Altschuler, Melvoin and Glasser
110 South Dearborn Street
Chicago 3, Illinois

Gentlemen:

There is enclosed a copy of a letter of this date addressed to the taxpayers whose name and address is given below. This copy is furnished in accordance with the authorization contained in power of attorney on filed in the Chicago office.

Very truly yours,
/s/ Harold R. All
District Director

Name and address of taxpayers — Maurice L. & Helen T. Davis
33 South Clark Street
Chicago 3, Illinois

Enclosure

Copy of report
FL-CHI-3-71 (12-57)
dgs

(Letterhead of)

U. S. TREASURY DEPARTMENT

In Reply Refer To
AUD:REV

Sep 9 1959

Mr. Maurice L. & Mrs. Helen T. Davis
33 South Clark Street
Chicago 3, Illinois

Dear Mr. and Mrs. Davis:

The attached report, which has been carefully reviewed by this office, discloses certain adjustments or conclusions resulting from the examination of the return(s) for the taxable year(s) indicated therein.

If you accept the findings, please execute the enclosed agreement form and return it to this office promptly. If you do not accept the findings, you may, WITHIN 30 DAYS from the date of this letter, file a protest in accordance with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the Regional Commissioner's office.

Submission of the agreement form will expedite assessment of the proposed deficiency and stop the running of interest thereon 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earliest. If desired, payment of the proposed deficiency may be made without awaiting assessment by making remittance therefor payable to the INTERNAL REVENUE SERVICE, at the address shown above, enclosing this letter or a copy thereof. The remittance should include interest on the additional tax (exclusive of penalties, if any) computed at 6% per annum from the due date of the return to the date of the payment.

This is not a statutory notice of deficiency. If, however, upon the expiration of the 30-day period you have not submitted the agreement form, or a written protest, or you have not advised that the deficiency has been paid or will be paid upon notice and demand, a statutory notice will then be sent you, as provided by law.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

IMPORTANT: It is essential that communications transmitting protests or agreements relative to this letter be addressed to the District Director of Internal Revenue, Audit Division, at the above address. Please cite the reference shown at the top right of this letter

Very truly yours,

District Director

Enclosures:
Report of Examination
Agreement Form (Form 870)
Receipt Form (Form 1291)

Instructions
Form L-8
(10-56)
dgs

PRELIMINARY STATEMENT

Form 1907 — Date Of Report: June 12, 1959

Name Of Taxpayer: Maurice L. & Helen T. Davis

Name Of Examiner: Roger T. Leonard

Summary Of Proposed Adjustments

Year Ended	Income Tax Deficiency
12/31/54	$24,123.46
12/31/55	22,805.13
Totals	$46,928.59

Net Deficiency (Overassessment)	Agreement Secured
$46,928.59	No

Name Of Person With Whom Findings Discussed
Mr. Davis and his attorney, Mr. William Klier

Principal Causes Of Changes, And Other Information
The principal cause of the change in tax liability results from the addition of assigned income.

Schedules And/Or Exhibits Attached
Schedules 1 through 8—15 pages

ADJUSTMENTS TO INCOME

Form 1908		Schedule 1
Name Of Taxpayer		Year Ended
Maurice L. & Helen T. Davis		12/31/54
1. Net income reported on return or as previously adjusted		$52,386.73
2. Additional income and unallowable deductions		
(A) Assigned Income	$38,018.00	
		$38,018.00
3. Total (Line 1 and items under line 2)		$90,404.73
4. Nontaxable income and additional deductions		$ None
5. Corrected net income (Line 3 minus total of items under line 4)		$90,404.73

EXPLANATION OF ITEMS

Form 886-A		Schedule No. 1a
Name Of Taxpayer		Year Ended
Maurice L. & Helen T. Davis		12/31/54
2(A) Assigned Income		$38,018.00
Per Examination	$38,018.00	
Per Tax Return	—0—	
Adjustment		$38,018.00

It has been determined that the income reported by the following six trusts is in reality that of the taxpayers which are:

Trust		F.Y.E.	Adjusted Gross Income
Trust "A" of	3/1/52	2/28/55	$ 6,565.24
" "B" "	"	"	6,565.24
" "A" "	10/1/52	9/30/54	6,221.88
" "B" "	"	"	6,221.88
" "C" "	"	"	6,221.88
" "D" "	"	"	6,221.88
Total			$38,018.00

This conclusion was reached after giving careful consideration to all of the facts and circumstances attendant upon the creation of these trusts and their operation as required by the Clifford Doctrine (23 AFTR 1077; 309 U.S. 331; Su. Ct. 554).

These six trusts were created on March 1, 1952 and October 1, 1952 by two gifts of cash and two trust agreements wherein the two sons of Mr. Maurice L. Davis were named as beneficiaries. The six trusts as such then became partners of Mr. Davis and Mr. Haskell Richards in Harwood Homes on August 11, 1953; and partners of Mr. Richards and a trust for his benefit, viz., Trust "H", in Summerfield Homes on October 15, 1953.

This adjustment is made because it was found on examination:

(1) that an anticipatory arrangement was made to divert this assigned income of the taxpayers into a much lower tax bracket to avoid the correct tax liability,

(2) that in form six separate taxable entities were created, but that in substance the income of these entities was that of the taxpayers.

Therefore, this adjustment is made applying the rule of Substance vs. Form stated by the Supreme Court as follows:

> "Questions of taxation must be determined by viewing what was actually done rather than the declared purpose of the participants; and when applying the provisions of the 16th Amendment and Income Tax Laws enacted thereunder, we must regard matters of substance and not mere form (Weiss v. Stearn, 265 U.S. 242; 68 L.Ed. 1001; 44 Su. Ct. 490; T.D. 3609—C. B. Dec. 1924, page 54; 4 AFTR 3986)."

Mr. Maurice L. Davis acted for these six trusts without a fee. It is the contention of the taxpayers that the services rendered by a trustee are negligible and that the capital of a trust, regardless of how minor in amount, is responsible for the income. This contention appears incredible in view of the fact that the trusts of March 1, 1952 were created by a gift of $1,000.00 and that the trusts of October 1, 1952 were created by a gift of $500.00. At most, interest rates for these trusts would produce $150.00 during 1954; whereas the six trusts reported total earnings of $38,018.00 for 1954.

It is also noteworthy that Mr. Davis acted as a trustee for Trust "H" (created for the benefit of Haskell Richards, his business partner) without a fee.

The interrelationship between trusts, donors, beneficiaries, and trustees makes it appear that the services of the various trustees were ultimately for their and/or children, regardless of which trust instrument happens to appoint the individual as trustee.

It is accordingly recommended that the income be taxed to the producer thereof.

FORM 1909 (REV. NOV. 1971) TRANSLUCENT

U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

COMPUTATION OF INCOME TAX - INDIVIDUALS

SCHEDULE	NAME OF TAXPAYER	YEAR ENDED
2	Francisco Sotelo T. Soto	6/30/74

1. Corrected adjusted gross or taxable income (From schedule 1)		9049.72
2. If tax table is applicable: Tax on corrected adjusted gross income with 1 exemptions		2403
3. If tax table is NOT applicable: A. Tax on corrected taxable income at line 1 is not over $2,000—20% thereof		1809.72
B. Tax on corrected taxable income at line 1 is over $2,000—computed for: ☐ SINGLE PERSON ☐ MARRIED PERSON FILING SEPARATELY ☐ HEAD OF A HOUSEHOLD ☒ MARRIED PERSONS FILING JOINTLY		4500.44
4. Alternate vs tax, if computed (From schedule 3)		43807.64
5. Corrected applicable tax: Line 2, 3, or 4		43807.64
6. Less: A. Dividends received credit	85.72	
B. Retirement income credit	—	
C. Other allowable credits or deductions (itemized)		85.72
7. Balance: Line 5 less total of amounts in line 6		43721.92
8. Plus: Self-Employment tax shown on return or as corrected (Schedule 4)		418.20
9. Total corrected income tax liability		44140.12
10. Total tax shown on return or as previously computed		19706.46
11. Statutory deficiency or (overassessment) (difference between lines 9 and 10)		24433.66

COMPUTATION OF ADDITIONAL TAX DUE OR OF NET OVERASSESSMENT

	AS SHOWN ON RETURN		AS CORRECTED	
12. Total income tax liability		19706.46		43,139.92
13. Payment of amounts: A. Income tax withheld				
B. F.I.C.A. tax withheld				
C. Payments on estimated tax	16,2[illegible].00		16,74.60	
D. Previous overassessments	3,5[illegible].46		[illegible]	
E. Sum of amounts A through D	19,706.46		2[illegible]706.46	
F. Deduct previous refunds and credits		[illegible]706.46		19706.46
14. Additional tax or (Net overassessment)		—		24123.46
15. Penalties or additions to the tax, if any				None

[illegible]

10

Form 1918
(REV. 9-61)
TRANSLUCENT

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

COMPUTATION OF ALTERNATIVE TAX - INDIVIDUALS

SCHEDULE

NAME OF TAXPAYER: Maurice Le Helen T. Levin

YEAR ENDED: 12/31

TYPE OF RETURN

- ☐ SINGLE PERSON
- ☐ MARRIED PERSON FILING SEPARATELY
- ☐ HEAD OF A HOUSEHOLD
- ☑ MARRIED PERSONS FILING JOINTLY

	$
1. Corrected taxable income (line 5, Schedule 1) less $2,400.00 less 50%	44,002.37
2. LESS: 50% of excess of total net long-term capital gain over total net short-term capital loss	3,146.38
3. BALANCE	40,855.99
4. PARTIAL TAX: Line 3 not more than $2,000 (not more than $4,000, if joint return)—20% thereof. Line 3 more than $2,000 (more than $4,000, if joint return)—Use rates applicable	40,661.26
5. ADD: 5% of line 2	3,146.38
6. ALTERNATIVE TAX	43,807.64

REMARKS

U.S. GOVERNMENT PRINTING OFFICE: 1961 O - 624911

Name Maurice Applebaum

SELF-EMPLOYED TAXPAYER | FISCAL NO. OF RETURN | DATE | YEAR | TAXABLE YEAR

HOME ADDRESS

33 S Clark St

S.S.A. USE ONLY	IRS INSPECTION CERTIFIED?	DATE

	NET EARNINGS	WAGES	SELF-EMPLOYMENT
INFORMATION PREVIOUSLY REPORTED	None		
CORRECT INFORMATION			

TOTAL NET EARNINGS FOR LOSS FROM SELF-EMPLOYMENT		WAGES	SOCIAL SECURITY TAX ON TIPS
1. As shown on return		4. Enter $7800 or if less, maximum applicable	9. As shown on return
2. Adjustments (Explain below)	2000.00	5. As shown on return	10. Correct amount
3. Corrected amount (If less than $400, enter NONE on lines 5 & 10)	2000.00	6. Adjustments (Explain below)	11. Correct amount (Not to exceed line 9)
		7. Correct amount (Not to exceed line 4)	12. Social security tax on tips (Line 10 minus 11)
		8. Wages (Line 4 minus 7)	

13. Self-employment tax (3 % of line 10)

EXPLANATION AND ADJUSTMENTS

* See adjustment 187 [illegible]

ADJUSTMENTS TO INCOME

Form 1908		Schedule 5
Name Of Taxpayer		Year Ended
Maurice L. & Helen T. Davis		12/31/55
1. Net income reported on return or as previously adjusted		$43,830.01
2. Additional income and unallowable deductions		
(A) Assigned Income	$37,687.27	
		$37,687.27
3. Total (Line 1 and items under line 2)		$81,517.28
4. Nontaxable income and additional deductions		$ None
5. Corrected net income (Line 3 minus total of items under line 4)		$81,517.28

EXPLANATION OF ITEMS

Form 886-A		Schedule No. 5a
Name Of Taxpayer		Year Ended
Maurice L. & Helen T. Davis		12/31/55
2(a) Assigned Income		$37,687.27
Per Examination	$37,687.27	
Per Tax Return	—0—	
Adjustment		$37,687.27

To add to taxable income the adjusted gross income reported by the following six trusts:

	Trust		F.Y.E.	Adjusted Gross Income
Trust	"A" of	3/1/52	2/29/56	$ 6,206.56
"	"B" "	"	"	6,206.56
"	"A" "	10/1/52	9/30/55	6,318.55
"	"B" "	"	"	6,318.54
"	"C" "	"	"	6,318.53
"	"D" "	"	"	6,318.53
Total				$37,687.27

For explanation, see adjustment 2(A) of Schedule 1a of this report.

Exhibit 3

-13- 1

Form 1909 (REV. NOV. 1957) TRANSLUCENT

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

COMPUTATION OF INCOME TAX - INDIVIDUALS

SCHEDULE	NAME OF TAXPAYER	YEAR ENDED (Specify)
6	Maurice L. & Helen T. Davis	12/3/55

1. Corrected adjusted gross or taxable income (From schedule 5)		$ 81,517.28
2. If tax table is applicable: Tax on corrected adjusted gross income with 4 exemptions		7,100.
3. If tax table is NOT applicable: A. Tax on corrected taxable income if line 1 is not over $2,000—20% thereof		24,117.28
B. Tax on corrected taxable income if line 1 is over $2,000—computed for: ☐ SINGLE PERSON ☐ MARRIED PERSON FILING SEPARATELY ☐ HEAD OF A HOUSEHOLD ☒ MARRIED PERSONS FILING JOINTLY		32,817.43
4. Alternative tax, if computed (From schedule 7)		37,817.45
5. Corrected applicable tax: Line 2, 3, or 4		37,817.45
6. Less: A. Dividends received credit	$ 242.30	
B. Retirement income credit		
C. Other allowable credits if deductions itemized:		242.30
7. Balance: Line 5 less total of amounts in line 6		37,569.15
8. Plus: Self-Employment tax shown on return or as corrected (Schedule 8)		126.00
9. Total corrected income tax liability		37,695.15
10. Total tax shown on return or as previously adjusted		14,790.02
11. Statutory deficiency or (overassessment) - difference between Lines 9 and 10		$ 22,905.13

COMPUTATION OF ADDITIONAL TAX DUE OR OF NET OVERASSESSMENT

	SHOWN ON YOUR RETURN		AS CORRECTED	
12. Total income tax liability		$ 14,790.02		$ 37,695.15
13. Less not adjusted: A. Income tax withheld	$ 0		$	
B. F.I.C.A. tax credit				
C. Payments on estimated tax	18,000.00		18,000.00	
D. Previous assessments	—		—	
E. Sum of amounts A through D	18,000.00		18,000.00	
F. Deduct previous refunds and/or credits	3,109.98	14,790.02	3,109.98	14,790.02
14. Additional tax or (Net overassessment)		—		22,905.13
15. Penalties or additions to the tax, if any				$ -0-

IRS - D. C.

U. S. GOVERNMENT PRINTING OFFICE: 1955 O - 429939

1C

— 14 —

FORM 1910 (REV. 6-61) TRANSLUCENT	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE	SCHEDULE NO.
	COMPUTATION OF ALTERNATIVE TAX - INDIVIDUALS	7

NAME OF TAXPAYER: Francisco Ly Hotel Corp. — YEAR ENDED: 11-

TYPE OF RETURN: ☐ SINGLE PERSON ☐ MARRIED PERSON FILING SEPARATELY ☐ HEAD OF A HOUSEHOLD ☐ MARRIED PERSONS FILING JOINTLY

1. Corrected taxable income (line 5, Schedule 5) ~~Less~~ 52,420.30	$ 72,120.30
2. LESS: 50% of excess of total net long-term capital gain over total net short-term capital loss	
3. BALANCE	72,120.30
4. PARTIAL TAX: Line 3 not more than $2,000 (not more than $4,000, if joint return)—20% thereof. Line 3 more than $2,000 (more than $4,000, if joint return)—Use rates applicable	24,730.30
5. ADD: 50% of line 2	3,296.30
6. ALTERNATIVE TAX	27,026.60

REMARKS

(U.S. GOVERNMENT PRINTING OFFICE: 1961 O - 606847)

Name: Maurice L. & Robert T. Davis -15-

SELF-EMPLOYED TAXPAYER: Maurice L Davis | SERIAL NO. OF RETURN: BC 1005266 | DATE: | YEAR: 1953 | SCHEDULE NO.: 8

HOME ADDRESS: 33 S. Clark St. Chgo. Ill.

BUSINESS ACTIVITY: Attorney & Home Builder

SOC. SECURITY ACCT. NO.: 000 00 0000

S.S.A. USE ONLY	NO CORRECTION / CERTIFIED	DATE		NET EARNINGS	WAGES	SELF-EMPLOY. INCOME
			INFORMATION PREVIOUSLY REPORTED	1 776.79	5 —	9 776.79
			CORRECT INFORMATION	3 [illegible]	7 —	10 [illegible]

TOTAL NET EARNINGS (OR LOSS) FROM SELF-EMPLOYMENT		WAGES		SELF-EMPLOYMENT INCOME	
1. As shown on return	776.79	4. Enter $3600 or $4200 (Maximum applicable)	4200.00	9. As shown on return	776.79
2. Adjustments (Explain below)	[illegible]	5. As shown on return	—	10. Correct amount subject to tax (Enter amount from line 3 or 8, whichever is less)	[illegible]
3. Corrected amount (If less than $600, enter NONE on lines 3 & 10)	[illegible]	6. Adjustments (Explain below)	—		
		7. Correct amount (Not to exceed line 4)	—		
		8. Maximum limitation on self-employment income (Line 6 minus 7)	[illegible]		

11. Self-employment tax (3 % of line 10) ..... [illegible]

EXPLANATION AND ADJUSTMENTS

* See adjustment 2(a) of schedule 5 of this report

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

SELF-EMPLOYMENT TAX ADJUSTMENT

FORM 885-F (REV. 12-57) (TRANSLUCENT)

17

Maurice L. & Helen T. Davis

SEP 9 1959

FORM 870 (REV. NOV. 1957) TRANSLUCENT	U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE **WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT**	DATE RECEIVED BY INTERNAL REVENUE SERVICE

Pursuant to section 6213(d) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws, the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the tax as provided by law, and the following overassessments are accepted as correct:

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL
Income	12/31/54	$21,123.46			$
Income	12/31/55	$22,805.13			$

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL

SIGNATURE(S) OF TAXPAYER(S)

(SEAL)

ADDRESS OF TAXPAYER

BY

DATE

Note.—The execution and filing of this form at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a "closing agreement" under section 7121 of the Internal Revenue Code of 1954, and does not, therefore, preclude the assertion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this form must be signed by both spouses unless one spouse is acting under a power of attorney. Signature by agent for one other. Where the taxpayer is a corporation, the form should be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation should be affixed.

52

EXHIBIT 4

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

In reply refer to: AUD:FA:15:RTL

(Received Oct 31 1958)

(Filed Nov 16 1961)

In pursuance of the provisions of existing Internal Revenue Laws Trust "A" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended September 30, 1955, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "A" Dated 10/1/52

Maurice L. Davis, Trustee

Taxpayer.[1]

.....

Taxpayer.[1]

By /s/ Maurice L. Davis

Trustee

H. Alan Long

District Director of Internal Revenue

By /s/ Ben B. Shraer

Group Supervisor

October 31, 1958

[Seal[2]]

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return Of A Husband And Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

In reply refer to: AUD:FA:#15:RTL

(Received Feb 5 1959)

In pursuance of the provisions of existing Internal Revenue Laws Trust "A" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

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ing which the making of an assessment is prohibited and for sixty days thereafter.

Trust "A" Dated 10/1 52

Taxpayer.

.....

Taxpayer.

By /s/ Maurice L. Davis

Trustee

H. Alan Long

District Director of Internal Revenue

By /s/ John G. Feely

Group Supervisor

Feb 5 1959

[Seal]

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U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

In reply refer to: AUD:FA:FAE:RTL
(Received Nov 7 1957)

In pursuance of the provisions of existing Internal Revenue Laws Trust "A" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

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Trust "A" Dated 10/1/52

Taxpayer.

.....

Taxpayer.

By /s/ Maurice L. Davis

Trustee

H. Alan Long
District Director of Internal Revenue
By /s/ Frank A. Ernst

[Seal]

Group Supervisor

Nov 7, 1957

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return Of A Husband And Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

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U. S. TREASURY DEPARTMENT
Internal Revenue Service
District Director
Chicago 90, Illinois
Post Office Box 1193
DEarborn 2-4500, Ext. 263
Sep 9 1959

In reply refer to
AUD:REV

Trust "A" dated 10/1/52
Mr. Maurice L. Davis, Trustee
33 So. Clark St.
Chicago 3, Illinois

Dear Mr. Davis:

The attached report, which has been carefully reviewed by this office, discloses certain adjustments or conclusions resulting from the examination of the return(s) for the taxable year(s) indicated therein.

If you accept the findings, please execute the enclosed agreement form and return it to this office promptly. If you do not accept the findings, you may, Within 30 Days from the date of this letter, file a protest in accordance with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the Regional Commissioner's office.

Submission of the agreement form will expedite the allowance of the proposed overassessment. If upon the expiration of the 30-day period you have not submitted the agreement form or a written protest, recommendation will then be made for the issuance of a certificate for the proposed overassessment.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

It is essential that your protests or agreements be addressed to the District Director of Internal Revenue, Audit Division, at the above address. Please cite the reference shown at top right of this letter.

Very truly yours,
/s/ Harold R. All
District Director

Enclosures:
Report of Examination
Agreement Form
Receipt Form (Form 1291)
Instructions
br

U. S. Treasury Department—Internal Revenue Service

PRELIMINARY STATEMENT

Form 1907

Date of Report—June 12, 1959.

Name of Taxpayer—Trust "A" dated 10/1/52.

Name of Examiner—Roger T. Leonard.

Summary of Proposed Adjustments

Year Ended	Overassessment
9/30/53	$1,557.44
9/30/55	1,425.57
Totals	$2,983.01

Net Deficiency (Overassessment)—($2,983.01).

Agreement Secured—No.

Name Of Person With Whom Findings Discussed—Mr. M. L. Davis and his attorney, Mr. William Klier.

Principal Causes Of Changes, And Other Information—The principal cause of the change in tax liability results from a decrease in taxable income.

Schedules And/Or Exhibits Attached—Schedules 1 through 4—5 pages.

ADJUSTMENTS TO INCOME

Form 1908 Schedule 1

Name Of Taxpayer	Year Ended
Trust "A" dated 10/1/52	9/30/54

1. Adjusted gross or taxable income reported on return or as previously adjusted			$6,121.88
2. Additional income and unallowable deductions			
(a) Exemption	$100.00		
(b) To Maurice L. Davis:			
Interest per tax return	51.68		
		$ 151.68	
3. Total (Line 1 and items under line 2)			$6,273.56

4. Nontaxable income and additional deductions		
(a) Assigned Income of Maurice L. Davis per Schedules 3 of the Revenue Agent's Reports of even date on the following:		
Harwood Homes for F.Y.E. 5/31/54	$2,779.46	
Summerfield Homes for F.Y.E. 9/30/54	3,494.10	$6,273.56
5. Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		$ None

COMPUTATION OF INCOME TAX—
ESTATES AND TRUSTS

Form 1913	Schedule No. 2
Name Of Taxpayer	Year Ended
Trust "A" dated 10/1/52	9/30/54
1. Corrected taxable income (Schedule 1)	$ None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)	"
3. Less:	
(A) Fiduciary's share of income tax paid to a foreign country or a United States possession	
(B) Fiduciary's share of tax paid at source on tax-free covenant bond interest	
(C) Fiduciary's share of dividends received credit	

(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)		
Total of amounts (A) through (D)		"
4. Corrected income tax liability		"
5. Income tax shown on return as previously adjusted		1,557.44
6. Statutory deficiency or (overassessment) Difference between lines 4 and 5		(1,557.44)

ADJUSTMENTS TO INCOME

Form 1908		Schedule 3
Name Of Taxpayer		Year Ended
Trust "A" dated 10/1/52		9/30/55
1. Adjusted gross or taxable income reported on return or as previously adjusted		$6,218.55
2. Additional income and unallowable deductions		
(a) Exemption	$100.00	
		$ 100.00
3. Total (Line 1 and items under line 2)		$6,318.55
4. Nontaxable income and additional deductions		
(a) Assigned Income of Maurice L. Davis per Schedules 6 of the Revenue Agent's Reports of even date on the following:		
Harwood Homes for F.Y.E. 5/31/55	$1,165.19	
Summerfield Homes for F.Y.E. 9/30/55	5,085.72	

Per tax return—Miscellaneous Income	67.64	$6,318.55
5. Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		$ None

COMPUTATION OF INCOME TAX—ESTATES AND TRUSTS

Form 1913	Schedule No. 4.
Name Of Taxpayer Trust "A" dated 10/1/52	Year Ended 9/30/55
1. Corrected taxable income (Schedule 3)	$ None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)	"
3. Less:	
(A) Fiduciary's share of income tax paid to a foreign country or a United States possession	
(B) Fiduciary's share of tax paid at source on tax-free covenant bond interest	
(C) Fiduciary's share of dividends received credit	
(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)	
Total of amounts (A) through (D)	"
4. Corrected income tax liability	"
5. Income tax shown on return as previously adjusted	1,425.57
6. Statutory deficiency or (overassessment) Difference between lines 4 and 5	(1,425.57)

Trust "A" dated 10/1/52 Client

SEP 8 '59

FORM 870 (REV. NOV 1955) TRANSLUCENT	U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE **WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT**	DATE RECEIVED BY INTERNAL REVENUE SERVICE

Pursuant to section 6213(d) of the Internal Revenue Code of 1954 (or corresponding provisions of prior internal revenue laws), the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954 (or corresponding provisions of prior internal revenue laws) are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the basis provided by law; and the following overassessments are accepted as correct.

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL
Income	9/30/54	$1,553.44			$
Income	9/30/55	1,425.57			

SIGNATURE(S) OF TAXPAYER(S)

(SEAL)

ADDRESS OF TAXPAYER

BY

DATE

Note.—The execution and filing of this form at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It does not, however, a final closing agreement under section 7121 of the Internal Revenue Code of 1954, and does not, therefore, preclude the assertion of a deficiency further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this form must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

Where the taxpayer is a corporation, the form shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

U.S. GOVERNMENT PRINTING OFFICE 1955 O—330929

BEFORE THE DISTRICT DIRECTOR OF INTERNAL REVENUE
Audit Division, At Chicago, Illinois

In The Matter Of Trust "A" Dated 10-1-52 Maurice L. Davis, Trustee Chicago, Illinois	Proposed Overassessment of Income Taxes for the Fiscal Years Ended September 30, 1954 and September 30, 1955.

PROTEST
(Received Feb 15 1960)

District Director of Internal Revenue,
Audit Division,
17 North Dearborn Street,
Chicago 2, Illinois.

Sir:

Receipt is hereby acknowledged of a letter dated September 9, 1959, addressed to the above-named trust, submitting a report by Internal Revenue Agent Roger T. Leonard under date of June 12, 1959, relating to an examination of the trust's income tax returns for the fiscal years ended September 30, 1954 and September 30, 1955. This report proposes overassessments of income tax for those years in the respective amounts of $1,557.44 and $1,425.57.

The trustee does not acquiesce in the proposed overassessments, but, on the contrary, protests against the same, and, in support of his protest, alleges and states as follows:

(a) The name and address of the trust are:
Trust "A" dated 10-1-52,
Maurice L. Davis, Trustee,
33 South Clark Street,
Chicago 3, Illinois.

(b) The letter advising of the Examiner's findings was dated September 9, 1959, and bears no identifying symbols.

(c) The taxable periods involved are the fiscal years ended September 30, 1954 and September 30, 1955.

(d) The finding to which the trustee takes exception is the assignment of income to Maurice L. Davis of the trusts's distributive share of the partnership net income of Harwood Homes and Summerfield Homes.

(e) The grounds upon which the taxpayer relies in connection with the exception taken are as follows:

There is being filed concurrently with this protest, a protest on behalf of Maurice L. and Helen T. Davis involving the same issues as are involved in the instant protest. The statements of fact and law pertaining to the matters under protest in the case of Maurice L. and Helen T. Davis are incorporated herein by reference, with equal force and effect as though recited herein in their entirety, in support of the exception taken by the trustee herein.

(f) The taxpayer requests that if this protest is not sustained, a hearing be had in this cause. It is further requested that a notice of said hearing be furnished to the undersigned representatives to whom duly executed power of attorney has been issued.

Respectfully submitted,
Trust "A" Dated 10-1-52
By /s/ Maurice L. Davis
Trustee

VERIFICATION

State of Illinois }
County of Cook } SS.

Maurice L. Davis, being first duly sworn, says that he is the Trustee of Trust "A" Dated 10-1-52, the above-named taxpayer; that as such he is duly authorized to execute this protest; that he has read the foregoing protest and the contents thereof, and is familiar with the statements contained therein; and that the facts stated therein are true to the best of his knowledge, information and belief.

/s/ Maurice L. Davis

Subscribed and sworn to
before me, a notary public,
this 11th day of January, 1960.

/s/ Erwin B. Neiman
Notary Public
My commission expires 1-3-61
(Seal)

STATEMENT BY THE REPRESENTATIVE

The foregoing protest was prepared by the undersigned representative at the request and instructions of the taxpayer, and, while the facts alleged are not known personally to the representative, they were obtained from information and sources believed to be reliable.

/s/ William Klier

Altschuler, Melvoin and Glasser,
110 South Dearborn Street,
Chicago 3, Illinois.
January 5, 1960.

EXHIBIT 5
(Filed Nov 16 1961)

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

(Received Oct 31 1958)

In reply refer to: AUD:FA:15:RTL

In pursuance of the provisions of existing Internal Revenue Laws Trust "B" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended September 30, 1955, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "B" Dated 10/1/52
Maurice L. Davis, Trustee

Taxpayer.

.....

Taxpayer.

By /s/ Maurice L. Davis, Trustee
H. Alan Long
District Director of Internal Revenue
By /s/ Ben B. Shraer
Group Supervisor

October 31, 1958
[Seal[2]]

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U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

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Trust "B" Dated 10 1/52

Taxpayer.

.....

Taxpayer.

By /s/ Maurice L. Davis, Trustee

H. Alan Long

District Director of Internal Revenue

By /s/ John G. Feely

Group Supervisor

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U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

(Received Nov 7 1957)

In reply refer to: AUD:FA:FAE:RTL

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Trust "B" Dated 10/1/52

Taxpayer

.....

Taxpayer

By /s/ Maurice L. Davis, Trustee

H. Alan Long

District Director of Internal Revenue

By /s/ Frank A. Ernst

Group Supervisor

Nov. 7, 1957

[Seal]

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U. S. TREASURY DEPARTMENT
Internal Revenue Service
District Director
Chicago 90, Illinois
Post Office Box 1193
DEarborn 2-4500, Ext. 263
Sep 9 1959

In reply refer to
AUD:REV

Trust "B" dated 10/1/52
Mr. Maurice L. Davis, Trustee
33 So. Clark St.
Chicago 3, Illinois

Dear Mr. Davis:

The attached report, which has been carefully reviewed by this office, discloses certain adjustments or conclusions resulting from the examination of the return(s) for the taxable year(s) indicated therein.

If you accept the findings, please execute the enclosed agreement form and return it to this office promptly. If you do not accept the findings, you may, Within 30 Days from the date of this letter, file a protest in accordance

with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the Regional Commissioner's office.

Submission of the agreement form will expedite the allowance of the proposed overassessment. If upon the expiration of the 30-day period you have not submitted the agreement form or a written protest, recommendation will then be made for the issuance of a certificate for the proposed overassessment.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

It is essential that your protests or agreements be addressed to the District Director of Internal Revenue, Audit Division, at the above address. Please cite the reference shown at top right of this letter.

Very truly yours,
/s/ Harold R. All
District Director

Enclosures:
Report of Examination
Agreement Form
(Receipt Form (Form 1291)
Instructions
br

PRELIMINARY STATEMENT

Form 1907
Date Of Report—June 12, 1959.
Name Of Taxpayer—Trust "B" dated 10/1/52.
Name Of Examiner—Roger T. Leonard.

Summary Of Proposed Adjustments

Year Ended	Overassessment
9/30/54	$1,557.44
9/30/55	1,425.56
Totals	$2,983.00

Net Deficiency (Overassessment)—($2,983.00).

Agreement Secured—No.

Name Of Person With Whom Findings Discussed—Mr. M. L. Davis and his attorney, Mr. William Klier.

Principal Causes Of Changes And Other Information—The principal cause of the change in tax liability results from a decrease in taxable income.

Schedules And/Or Exhibits Attached—Schedules 1 through 4—5 pages.

ADJUSTMENTS TO INCOME

Form 1908

Schedule 1

Name Of Taxpayer—Trust "B" dated 10/1/52.

Year Ended—9/30/54.

1. Adjusted gross or taxable income reported on return or as previously adjusted			$6,121.88
2. Additional income and unallowable deductions			
(a) Exemption	$ 100.00		
(b) To Maurice L. Davis:			
Interest per tax return	51.68		
		$ 151.68	
3. Total—			
(Line 1 and items under line 2)			$6,273.56
4. Nontaxable income and additional deductions			
(a) Assigned Income of Maurice L. Davis per Schedules 3 of the Revenue Agent's Reports of even date on the following:			

Harwood Homes for F.Y.E. 5/31/54	$2,779.46	
Summerfield Homes for F.Y.E. 9/30/54	$3494.10	$6,273.56

5. Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4) None

COMPUTATION OF INCOME TAX—ESTATES AND TRUSTS

Form 1913

Schedule No. 2

Name Of Taxpayer—Trust "B" dated 10/1/52.
Year Ended—9/30/54.

1. Corrected taxable income (Schedule 1) None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12 below) "
3. Less:
   (A) Fiduciary's share of income tax paid to a foreign country or a United States possession
   (B) Fiduciary's share of tax paid at source on tax-free covenant bond interest
   (C) Fiduciary's share of dividends received credit
   (D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)
   Total of amounts (A) through (D) "
4. Corrected income tax liability "
5. Income tax shown on return or as previously adjusted $1,557.44
6. Statutory deficiency or (overassessment)—Dif-

ADJUSTMENTS TO INCOME

Form 1908

Schedule 3

Name Of Taxpayer—Trust "A" dated 10/1/52.
Year Ended—9/30/55.

1.	Adjusted gross or taxable income reported on return or as previously adjusted		$6,218.54
2.	Additional income and unallowable deductions		
	(a) Exemption	$ 100.00	
			$ 100.00
3.	Total— (Line 1 and items under line 2)		$6,318.54
4.	Nontaxable income and additional deductions		
	(a) Assigned Income of Maurice L. Davis per Schedules 6 of the Revenue Agent's Reports of even date on the following:		
	Harwood Homes for F.Y.E. 5/31/55	$1,165.19	
	Summerfield Homes for F.Y.E. 9/30/55	$5,085.71	
	Per tax return— Miscellaneous Income	$ 67.64	$6,318.54
5.	Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		None

COMPUTATION OF INCOME—ESTATES AND TRUSTS

Form 1913

Schedule No. 4

Name Of Taxpayer—Trust "A" dated 10/1/52.
Year Ended—9/30/55.

1.	Corrected taxable income (Schedule 3)	None
2.	Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)	"
3.	Less:	
	(A) Fiduciary's share of income tax paid to a foreign country or a United States possession	
	(B) Fiduciary's share of tax paid at source on tax-free covenant bond interest	
	(C) Fiduciary's share of dividends received credit	
	(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)	
	Total of amounts (A) through (D)	"
4.	Corrected income tax liability	"
5.	Income tax shown on return or as previously adjusted	$1,425.56
6.	Statutory deficiency or (overassessment)—Difference between lines 4 and 5	$1,425.56

Exhibit 5

Trust "B" dated 10/1/52 — Chicago

SEP 9 1959

FORM 870 (REV. NOV. 1957) TRANSLUCENT	U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE **WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT**	DATE RECEIVED BY INTERNAL REVENUE SERVICE

Pursuant to section 6213(d) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws, the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the tax as provided by law; and the following overassessments are accepted as correct:

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL
Income	9/30/54	$1,557.44			$1,557.44
Income	9/30/55	1,425.56			1,425.56

SIGNATURE(S) OF TAXPAYER(S)

(SEAL)

ADDRESS OF TAXPAYER

BY

DATE

Note.—The execution and filing of this form at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code of 1954, and does not, therefore, preclude the assertion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this form must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

Where the taxpayer is a corporation, the form shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

Before The District Director Of Internal Revenue,
Audit Division, At Chicago, Illinois

In The Matter Of Trust "B" Dated 10-1-52 Maurice L. Davis, Trustee Chicago, Illinois	Proposed Overassessment of Income Taxes for the Fiscal Years Ended September 30, 1954 and September 30, 1955.

PROTEST
(Received Feb 15 1960)

District Director of Internal,
Audit Division,
17 North Dearborn Street,
Chicago 2, Illinois.

Sir:

Receipt is hereby acknowledged of a letter dated September 9, 1959, addressed to the above-named trust, submitting a report by Internal Revenue Agent Roger T. Leonard under date of June 12, 1959, relating to an examination of the trust's income tax returns for the fiscal years ended September 30, 1954 and September 30, 1955. This report proposes overassessments of income tax for those years in the respective amounts of $1,557.44 and $1,425.56.

The trustee does not acquiesce in the proposed overassessments, but, on the contrary, protests against the same, and, in support of his protest, alleges and states as follows:

(a) The name and address of the trust are:

Trust "B" dated 10-1-52,
Maurice L. Davis, Trustee,
33 South Clark Street,
Chicago 3, Illinois.

(b) The letter advising of the Examiner's findings was dated September 9, 1959, and bears no identifying symbols.

(c) The taxable periods involved are the fiscal years ended September 30, 1954 and September 30, 1955.

(d) The finding to which the trustee takes exception is the assignment of income to Maurice L. Davis of the trust's distributive share of the partnership net income of Harwood Homes and Summerfield Homes.

(e) The grounds upon which the taxpayer relies in connection with the exception taken are as follows:

There is being filed concurrently with this protest, a protest on behalf of Maurice L. and Helen T. Davis involving the same issues as are involed in the instant protest. The statements of fact and law pertaining to the matters under protest in the case of Maurice L. and Helen T. Davis are incorporated herein by reference, with equal force and effect as though recited herein in their entirety, in support of the exception taken by the trustee herein.

(f) The taxpayer requests that if this protest is not sustained, a hearing be had in this cause. It is further requested that a notice of said hearing be furnished to the undersigned representatives to whom duly executed power of attorney has been issued.

Respectfully submitted,
Trust "B" Dated 10-1-52
By /s/ Maurice L. Davis
Trustee

VERIFICATION

State Of Illinois }
County Of Cook } ss.

Maurice L. Davis, being first duly sworn, says that he is the Trustee of Trust "B" Dated 10-1-52, the above-named taxpayer; that as such he is duly authorized to execute this protest; that he has read the foregoing protest and the contents thereof, and is familiar with the statements contained therein; and that the facts stated therein are true to the best of his knowledge, information and belief.

/s/ Maurice L. Davis

Subscribed and sworn to
before me, a notary public,
this 11th day of January, 1960
/s/ Erwin B. Neiman
Notary Public
My commission expires 1-3-61.
(Seal)

STATEMENT BY THE REPRESENTATIVE

The foregoing protest was prepared by the undersigned representative at the request and instructions of the taxpayer, and, while the facts alleged are not known personally to the representative, they were obtained from information and sources believed to be reliable.

/s/ William Klier

Altschuler, Melvoin and Glasser,
110 South Dearborn Street,
Chicago 3, Illinois.

EXHIBIT 6
(Filed Nov 16 1961)

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

In Reply Refer To: AUD:FA:15:RTL
Received Oct 31, 1958

In pursuance of the provisions of existing Internal Revenue Laws Trust "C" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended September 30, 1955, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "C" Dated 10/1/52
Maurice L. Davis, Trustee Taxpayer.[1]

.....

Taxpayer[1]
By /s/ Maurice L. Davis [Seal[2]]
Trustee

H. Alan Long
District Director of Internal Revenue
By /s/ Ben B. Shraer Group Supervisor October 31, 1958

[1]This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return Of A Husband And Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2]If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

In Reply Refer To: AUD:FA:#15:RTL
Received Feb 5, 1959

In pursuance of the provisions of existing Internal Revenue Laws Trust "C" Dated 10/1/52, Maurice L. Davis, Trustee a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended September 30, 1954, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "C" Dated 10/1/52
Taxpayer[1]

.....

Taxpayer[1]

By /s/ Maurice L. Davis [Seal[2]]
Trustee

H. Alan Long
District Director of Internal Revenue

By /s/ John G. Feely Group Supervisor Feb 5 1959

[1]This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return Of A Husband And Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

In Reply Refer To: AUD:FA:FAE:RTL
Received Nov 7, 1957

In pursuance of the provisions of existing Internal Revenue Laws Trust "C" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended September 30, 1954, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1959, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "C" Dated 10/1/52
Taxpayer[1]

.....

Taxpayer[1]
By /s/ Maurice L. Davis [Seal[2]]
Trustee

H. Alan Long
District Director of Internal Revenue
By /s/ Frank A. Ernst Group Supervisor Nov. 7, 1957

[1]This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return Of A Husband And Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

(Letterhead—U. S. Treasury Department)
Internal Revenue Service

In Reply Refer To AUD:REV
Sep 9 1959

Trust "C" dated 10/1/52
Mr. Maurice L. Davis, Trustee
33 So. Clark Street
Chicago 3, Illinois

Dear Mr. Davis:

The attached report, which has been carefully reviewed by this office, discloses certain adjustments or conclusions resulting from the examination of the return(s) for the taxable year(s) indicated therein.

If you accept the findings, please execute the enclosed agreement form and return it to this office promptly. If you do not accept the findings, you may, Within 30 Days from the date of this letter, file a protest in accordance with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the Regional Commissioner's office.

Submission of the agreement form will expedite the allowance of the proposed overassessment. If upon the expiration of the 30-day period you have not submitted the agreement form or a written protest, recommendation will then be made for the issuance of a certificate for the proposed overassessment.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

It is essential that your protests or agreements be addressed to the District Director of Internal Revenue, Audit

Division, at the above address. Please cite the reference shown at top right of this letter.

Very truly yours,
/s/ Harold R. All
District Director

Enclosures:
Report of Examination
Agreement Form
Receipt Form (Form 1291)
Instructions
br

PRELIMINARY STATEMENT

Form 1907

Date of Report—June 12, 1959
Name of Taxpayer—Trust "C" dated 10/1/52
Name of Examiner—Rogert T. Leonard

Year Ended	Overassessment
9/30/54	$1,557.44
9/30/55	1,425.56
Totals	$2,983.00

Net Deficiency (Overassessment)—$(2,980.00)
Agreement Secured—No
Name of Person with whom findings discussed—Mr. M. L. Davis and his attorney: Mr. William Klier
Principal Causes of Changes, and Other Information—The principal cause of the change in tax liability results from a decrease in taxable income.
Schedules and/or Exhibits Attached—Schedules 1 through 4—5 pages

ADJUSTMENTS TO INCOME

Form 1908

Schedule 1

Name of Taxpayer—Trust "C" dated 10/1/52

Year Ended 9/30/54

1.	Adjusted gross or taxable income reported on return or as previously adjusted		$6,121.88
2.	Additional income and unallowable deductions		
(a)	Exemption	$ 100.00	
(b)	To Maurice L. Davis: Interest per tax return	51.67	
			$ 151.67
3.	Total—(Line 1 and items under line 2)		$6,273.55
4.	Nontaxable income and additional deductions		
(a)	Assigned Income of Maurice L. Davis per Schedule 3 of the Revenue Agent's Reports of even date on the following:		
	Harwood Homes for F.Y.E. 5/31/54	2,779.46	
	Summerfield Homes for F.Y.E. 9/30/54	3,494.09	
			$6,273.55
5.	Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		$ None

COMPUTATION OF INCOME TAX—ESTATES AND TRUSTS

Form 1913

Schedule No. 2
Name of Taxpayer—Trust "C" dated 10/1/52
Year Ended—9/30/54

1.	Corrected taxable income (Schedule 1)	$ None
2.	Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)	"
3.	Less:	
	(A) Fiduciary's share of income tax paid to a foreign country or a United States possession	
	(B) Fiduciary's share of tax paid at source on a tax-free covenant bond interest	
	(C) Fiduciary's share of dividends received credit	
	(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)	
	Total of amounts (A) through (D)	"
4.	Corrected income tax liability	"
5.	Income tax shown on return or as previously adjusted	$1,557.44
6.	Statutory deficiency or (overassessment)—Difference between lines 4 and 5	(1,557.44)

ADJUSTMENTS TO INCOME

Form 1908

Schedule 3
Name of Taxpayer—Trust "C" dated 10/1/52
Year Ended—9/30/55

1. Adjusted gross or taxable income reported on return or as previously adjusted		$6,218.53
2. Additional income and unallowable deductions		
(a) Exemption	$ 100.00	
		$ 100.00
3. Total—(Line 1 and items under line 2)		$6,318.53
4. Nontaxable income and additional deductions		
(a) Assigned Income of Maurice L. Davis per Schedules 6 of the Revenue Agent's Reports of even date on the following:		
Harwood Homes for F.Y.E. 5/31/55	1,165.18	
Summerfield Homes for F.Y.E. 9/30/55	5,085.71	
Per Tax Return—Miscellaneous Income	67.64	$6,318.53
5. Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		$ None

COMPUTATION OF INCOME TAX—
ESTATES AND TRUSTS

Form 1913

Schedule No. 4

Name of Taxpayer—Trust "C" dated 10/1/52

Year Ended—9/30/55

1. Corrected taxable income (Schedule 3)	$ None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)	"

3.	Less:	
	(A) Fiduciary's share of income tax paid to a foreign country or a United States possession	
	(B) Fiduciary's share of tax paid at source on a tax-free covenant bond interest	
	(C) Fiduciary's share of dividends received credit	
	(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)	
	Total of amounts (A) through (D)	"
4.	Corrected income tax liability	"
5.	Income tax shown on return or as previously adjusted	1,425.56
6.	Statutory deficiency or (overassessment)— Difference between lines 4 and 5	(1,425.56)

Trust "C" dated 10/1/52 Chicago

SEP 2 19

FORM 870 (REV. NOV. 1957) TRANSLUCENT	U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE **WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT**	DATE RECEIVED BY INTERNAL REVENUE SERVICE

Pursuant to section 6213(d) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws, the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the tax as provided by law; and the following overassessments are accepted as correct:

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL
Income	9/30/54	$1,553.44			$1,553.44
Income	9/30/55	1,425.56			1,425.56

SIGNATURE(S) OF TAXPAYER(S)

(SEAL)

ADDRESS OF TAXPAYER

BY

DATE

Note.—The execution and filing of this form at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code of 1954, and does not, therefore, preclude the assertion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this form must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

Where the taxpayer is a corporation, the form shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

U.S. GOVERNMENT PRINTING OFFICE: 1958 O—000000

BEFORE THE DISTRICT DIRECTOR OF INTERNAL REVENUE
Audit Division, At Chicago, Illinois

In The Matter Of Trust "C" Dated 10-1-52 Maurice L. Davis, Trustee Chicago, Illinois	Proposed Overassessment of Income Taxes for the Fiscal Years Ended September 30, 1954 and September 30, 1955

PROTEST
(Received Feb 15 1960)

District Director of Internal Revenue,
Audit Division,
17 North Dearborn Street,
Chicago 2, Illinois.

Sir:

Receipt is hereby acknowledged of a letter dated September 9, 1959, addressed to the above-named trust, submitting a report by Internal Revenue Agent Roger T. Leonard under date of June 12, 1959, relating to an examination of the trust's income tax returns for the fiscal years ended September 30, 1954 and September 30, 1955. This report proposes overassessments of income tax for those years in the respective amounts of $1,557.44 and $1,425.56.

The trustee does not acquiesce in the proposed overassessments, but, on the contrary, protests against the same, and, in support of his protest, alleges and states as follows:

(a) The name and address of the trust are:
Trust "C" dated 10-1-52,
Maurice L. Davis, Trustee,
33 South Clark Street,
Chicago 3, Illinois.

(b) The letter advising of the Examiner's findings was dated September 9, 1959, and bears no identifying symbols.

(c) The taxable periods involved are the fiscal years ended September 30, 1954 and September 30, 1955.

(d) The finding to which the trustee takes exception is the assignment of income to Maurice L. Davis of the trust's distributive share of the partnership net income of Harwood Homes and Summerfield Homes.

(e) The grounds upon which the taxpayer relies in connection with the exception taken are as follows:

There is being filed concurrently with this protest, a protest on behalf of Maurice L. and Helen T. Davis involving the same issues as are involved in the instant protest. The statements of fact and law pertaining to the matters under protest in the case of Maurice L. and Helen T. Davis are incorporated herein by reference, with equal force and effect as though recited herein in their entirety, in support of the exception taken by the trustee herein.

(f) The taxpayer requests that if this protest is not sustained, a hearing be had in this cause. It is further requested that a notice of said hearing be furnished to the undersigned representatives to whom duly executed power of attorney has been issued.

Respectfully submitted,
Trust "C" Dated 10-1-52
By /s/ Maurice L. Davis
Trustee

VERIFICATION

State of Illinois }
County of Cook } SS.

Maurice L. Davis, being first duly sworn, says that he is the Trustee of Trust "C" Dated 10-1-52, the above-named taxpayer; that as such he is duly authorized to execute this protest; that he has read the foregoing protest and the contents thereof, and is familiar with the statements contained therein; and that the facts stated therein are true to the best of his knowledge, information and belief.

/s/ Maurice L. Davis

Subscribed and sworn to
before me, a notary public,
this 11th day of January, 1960.

/s/ Erwin B. Neiman
Notary Public
My commission expires 1-3-61
(Seal)

STATEMENT BY THE REPRESENTATIVE

The foregoing protest was prepared by the undersigned representative at the request and instructions of the taxpayer, and, while the facts alleged are not known personally to the representative, they were obtained from information and sources believed to be reliable.

/s/ William Klier

Altschuler, Melvoin and Glasser,
110 South Dearborn Street,
Chicago 3, Illinois.
January 5, 1960.

EXHIBIT 7
(Filed Nov 16 1961)

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

(Received Oct 31 1958)

In Reply Refer To: AUD:FA:15:RTL

In pursuance of the provisions of existing Internal Revenue Laws Trust "D" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended September 30, 1955, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "D" Dated 10/1/52
Maurice L. Davis, Trustee
Taxpayer.[1]

.....
Taxpayer.[1]

By /s/ Maurice L. Davis
Trustee
[Seal[2]]

H. Alan Long
District Director of Internal Revenue
By /s/ Ben B. Shraer
Group Supervisor
October 31, 1958

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

(Received Feb 5 1959)
In Reply Refer To: AUD:FA:15:RTL

In pursuance of the provisions of existing Internal Revenue Laws Trust "D" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended September 30, 1954, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "D" Dated 10/1/52
Taxpayer.[1]

.....
Taxpayer.[1]

By /s/ Maurice L. Davis
Trustee
[Seal[2]]

H. Alan Long
District Director of Internal Revenue
By /s/ John G. Feely
Group Supervisor
Feb 5 1959

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

(Received Nov 7. 1957)

In Reply Refer To: AUD:FA:FAE:RTL

In pursuance of the provisions of existing Internal Revenue Laws Trust "D" Dated 10/1/52, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 S. Clark St., Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended September 30, 1954, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1959, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "D" Dated 10/1/52

Taxpayer.[1]

.....

Taxpayer.[1]

By /s/ Maurice L. Davis

Trustee

[Seal[2]]

H. Alan Long

District Director of Internal Revenue

/s/ Frank A. Ernst

Group Supervisor

Nov. 7, 1957

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or

trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

U. S. TREASURY DEPARTMENT
Internal Revenue Service
District Director
Chicago 90, Illinois
Post Office Box 1193
DEarborn 2-4500, Ext. 263
Sep 9 1959

In reply refer to
AUD:REV

Trust "D" dated 10/1/52
Mr. Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Gentlemen:

The attached report, which has been carefully reviewed by this office, discloses certain adjustments or conclusions resulting from the examination of the return(s) for the taxable year(s) indicated therein.

If you accept the findings, please execute the enclosed agreement form and return it to this office promptly. If you do not accept the findings, you may, Within 30 Days

from the date of this letter, file a protest in accordance with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the Regional Commissioner's office.

Submission of the agreement form will expedite the allowance of the proposed overassessment. If upon the expiration of the 30-day period you have not submitted the agreement form of a written protest, recommendation will then be made for the issuance of a certificate for the proposed overassessment.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

It is essential that your protests or agreements be addressed to the District Director of Internal Revenue, Audit Division, at the above address. Please cite the reference shown at top right of this letter.

Very truly yours,
/s/ Harold R. All
District Director

Enclosures:
Report of Examination
Agreement Form
Receipt Form (Form 1291)
Instructions
dgs

PRELIMINARY STATEMENT

Form 1907

Date Of Report—June 12, 1959.
Name Of Taxpayer—Trust "D" dated 10/1/52.
Name Of Examiner—Roger T. Leonard.

Summary Of Proposed Adjustments

Year Ended	Overassessment
9/30/54	$1,557.44
9/30/55	$1,425.56
Totals	$2,983.00

Net Deficiency (Overassessment)—($2,983.00).
Agreement Secured—No.
Name Of Person With Whom Findings Discussed—Mr. M. L. Davis and his attorney Mr. William Klier.
Principal Causes Of Changes, And Other Information—The principal cause of the change in tax liability results from a decrease in taxable income.
Schedules And/Or Exhibits Attached—Schedules 1 through 4—5 pages.

ADJUSTMENTS TO INCOME

Form 1908

Schedule 1

Name Of Taxpayer—Trust "D" dated 10/1/52.
Year Ended—9/30/54.

1. Adjusted gross or taxable income reported on return or as previously adjusted		$6,121.88
2. Additional income and unallowable deductions		
(a) Exemption	$100.00	

(b) To Maurice L. Davis:
Interest per tax return 51.67

$ 151.67

3. Total—
(Line 1 and items under line 2) $6,273.55
4. Nontaxable income and additional deductions
(a) Assigned Income of Maurice L. Davis per Schedules 3 of the Revenue Agent's Reports of even date on the following:
Harwood Homes for F.Y.E. 5/31/54 $2,779.46
Summerfield Homes for F.Y.E. 9/30/54 $3,494.09

$6,273.55

5. Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4) None

COMPUTATION OF INCOME TAX—
ESTATES AND TRUSTS

Form 1913

Schedule No. 2

Name Of Taxpayer—Trust "D" dated 10/1/52.
Year Ended—9/30/54.

1. Corrected taxable income (Schedule 1) None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12 below) "
3. Less:
(A) Fiduciary's share of income tax paid to a foreign country or a United States possession

(B) Fiduciary's share of tax paid at source on tax-free covenant bond interest	
(C) Fiduciary's share of dividends received credit	
(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitations)	
Total of amounts (A) through (D)	"
4. Corrected income tax liability	"
5. Income tax shown on return or as previously adjusted	$1,557.44
6. Statutory deficiency or (overassessment)—Difference between lines 4 and 5	($1,557.44)

ADJUSTMENTS TO INCOME

Form 1908

Schedule 3

Name Of Taxpayer—Trust "D" dated 10/1/52.
Year Ended—9/30/55.

1. Adjusted gross or taxable income reported on return or as previously adjusted		$6,218.53
2. Additional income and unallowable deductions		
(a) Exemption	$100.00	
		$ 100.00
3. Total— (Line 1 and items under line 2)		$6,318.53
4. Nontaxable income and additional deductions		

(a) Assigned Income of Maurice L. Davis per Schedules 6 of the Revenue Agent's Reports of even date on the following:		
Harwood Homes for F.Y.E. 5/31/55	$1,165.18	
Summerfield Homes for F.Y.E. 9/30/55	$5,085.71	
Per Tax Return—Miscellaneous Income	67.64	$6,318.53
5. Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		None

COMPUTATION OF INCOME TAX—
ESTATES AND TRUSTS

Form 1913

Schedule No. 4

Name Of Taxpayer—Trust "D" dated 10/1/52.
Year Ended—9/30/55.

1. Corrected taxable income (Schedule 3)	None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)	"
3. Less:	
(A) Fiduciary's share of income tax paid to a foreign country or a United States possession	
(B) Fiduciary's share of tax paid at source on tax-free covenant bond interest	
(C) Fiduciary's share of dividends received credit	

(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitations)	
Total of amounts (A) through (D)	"
4. Corrected income tax liability	"
5. Income tax shown on return or as previously adjusted	$1,425.56
6. Statutory deficiency or (overassessment)—Difference between lines 4 and 5	($1,425.66)

Trust "D" dated 10/1/52

SEP 9 1959

Form 870
(Rev. Nov. 1957)
TRANSLUCENT

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT

Pursuant to section 6213 (d) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws, the restrictions provided in section 6213 (a) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the deficiencies as provided by law, and the acceptance of the overassessments, if any, stated below, if any, in full settlement of the liability for the taxes for the taxable years ended as stated:

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY	

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY	
Income	9/30/54	$1,[illegible]		
Income	9/30/55	$1,425.[illegible]		

SIGNATURE(S) OF TAXPAYER(S)

(SEAL)

ADDRESS OF TAXPAYER

BY

DATE

Note.—The execution and filing of this form at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code of 1954, and does not therefore preclude the assertion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitations for refund, assessment, or collection of the tax.

If executed with respect to a joint return (RETURN OF A HUSBAND AND A WIFE) this form must be signed by both persons unless the spouse is under a power of attorney, duly executed and filed with the Internal Revenue Service. Where the taxpayer is a corporation, the name should be signed with the corporate name followed by the signature and title of each officer of the corporation who is also empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

[illegible]

BEFORE THE DISTRICT DIRECTOR OF INTERNAL REVENUE
Audit Division, At Chicago, Illinois

In The Matter Of Trust "D" Dated 10-1-52 Maurice L. Davis, Trustee Chicago, Illinois	Proposed Overassessment of Income Taxes for the Fiscal Years Ended September 30, 1954 and September 30, 1955

PROTEST
(Received Feb 15 1960)

District Director of Internal Revenue,
Audit Division,
17 North Dearborn Street,
Chicago 2, Illinois.

Sir:

Receipt is hereby acknowledged of a letter dated September 9, 1959, addressed to the above-named trust, submitting a report by Internal Revenue Agent Roger T. Leonard under date of June 12, 1959, relating to an examination of the trust's income tax returns for the fiscal years ended September 30, 1954 and September 30, 1955. This report proposes overassessments of income tax for those years in the respective amounts of $1,557.44 and $1,425.56.

The trustee does not acquiesce in the proposed overassessments, but, on the contrary, protests against the same, and, in support of his protest, alleges and states as follows:

(a) The name and address of the trust are:
Trust "D" dated 10-1-52,
Maurice L. Davis, Trustee,
33 South Clark Street,
Chicago 3, Illinois.

(b) The letter advising of the Examiner's findings was dated September 9, 1959, and bears no identifying symbols.

(c) The taxable periods involved are the fiscal years ended September 30, 1954 and September 30, 1955.

(d) The finding to which the trustee takes exception is the assignment of income to Maurice L. Davis of the trust's distributive share of the partnership net income of Harwood Homes and Summerfield Homes.

(e) The grounds upon which the taxpayer relies in connection with the exception taken are as follows:

There is being filed concurrently with this protest, a protest on behalf of Maurice L. and Helen T. Davis involving the same issues as are involved in the instant protest. The statements of fact and law pertaining to the matters under protest in the case of Maurice L. and Helen T. Davis are incorporated herein by reference, with equal force and effect as though recited herein in their entirety, in support of the exception taken by the trustee herein.

(f) The taxpayer requests that if this protest is not sustained, a hearing be had in this cause. It is further requested that a notice of said hearing be furnished to the undersigned representatives to whom duly executed power of attorney has been issued.

Respectfully submitted,
Trust "D" Dated 10-1-52
By /s/ Maurice L. Davis
Trustee

VERIFICATION

State of Illinois } SS.
County of Cook }

Maurice L. Davis, being first duly sworn, says that he is the Trustee of Trust "D" Dated 10-1-52, the above-named taxpayer; that as such he is duly authorized to execute this protest; that he has read the foregoing protest and the contents thereof, and is familiar with the statements contained therein; and that the facts stated therein are true to the best of his knowledge, information and belief.

/s/ Maurice L. Davis

Subscribed and sworn to
before me, a notary public,
this 11th day of January, 1960.

/s/ Erwin B. Neiman
Notary Public

My commission expires 1-3-61
(Seal)

STATEMENT BY THE REPRESENTATIVE

The foregoing protest was prepared by the undersigned representative at the request and instructions of the taxpayer, and, while the facts alleged are not known personally to the representative, they were obtained from information and sources believed to be reliable.

/s/ William Klier

Altschuler, Melvoin and Glasser,
110 South Dearborn Street,
Chicago 3, Illinois.
January 5, 1960.

EXHIBIT 8
(Filed Nov 16 1961)

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

In Reply Refer To: AUD:FA:#15:RTL
Received Feb 5 1959

In pursuance of the provisions of existing Internal Revenue Laws Trust "A" Dated March 1, 1952, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 South Clark Street, Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended February 29, 1956, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "A" Dated March 1, 1952
Taxpayer.[1]

.....
Taxpayer.[1]

By /s/ Maurice L. Davis [Seal[2]]
Trustee

H. Alan Long
District Director of Internal Revenue
By /s/ John G. Feely Group Supervisor Feb 5 1959

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return Of A Husband And Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

NOTICE TO THE DISTRICT DIRECTOR OF INTERNAL REVENUE OF FIDUCIARY RELATIONSHIP

Received Feb 5, 1959

Form 56

In accordance with provisions of existing internal revenue laws, notice is hereby given that I Maurice L. Davis residing at 33 South Clark Street, Chicago 3, Illinois am the duly qualified and acting Trustee of the Trust of Trust "A" Dated March 1, 1952 of 33 South Clark Street, Chicago 3, Illinois

This notice is given with respect to the liabilities of The Trust under the Internal Revenue Code. Specific liabilities of which I have knowledge are as follows, Income Tax Liability For The Fiscal Year Ended February 29, 1956

The following instrument evidencing my authority to act for the Trust "A" Dated March 1, 1952 in the capacity stated is now on file with you:

Trust Agreement Dated March 1, 1952

/s/ Maurice L. Davis.
Trustee

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

In Reply Refer To: AT D:FA:#15:RTL

Received Feb 5 1959

Form 872

In pursuance of the provisions of existing Internal Revenue Laws Trust "A" Dated March 1, 1952, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 South Clark Street, Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended February 28, 1955, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "A" Dated March 1, 1952
Taxpayer.[1]

.....

Taxpayer.[1]

By /s/ Maurice L. Davis [Seal[2]]
Trustee

H. Alan Long
District Director of Internal Revenue
By /s/ John G. Feely Group Supervisor Feb 5 1959

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[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return Of A Husband And Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

U. S. TREASURY DEPARTMENT
Internal Revenue Service
District Director
Chicago 90, Illinois
Post Office Box 1193
Dearborn 2-4500, Ext. 263

In Reply Refer To AUD:REV
Sep 9 1959

Trust "A" dated 3/1/52
Mr. Maurice L. Davis, Trustee
33 South Clark Street
Chicago 3, Illinois

Dear Mr. Davis:

The attached report, which has been carefully reviewed by this office, discloses certain adjustments or conclusions resulting from the examination of the return for the taxable year indicated therein.

If you accept the findings, please execute the enclosed agreement form and return it to this office promptly. If you do not accept the findings, you may within 30 Days from the date of this letter, file a protest in accordance with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the Regional Commissioner's office.

Submission of the agreement form will expedite the allowance of the proposed overassessment. If upon the expiration of the 30-day period you have not submitted the agreement form or a written protest, recommendation will then be made for the issuance of a certificate for the proposed overassessment.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

It is essential that your protests or agreements be addressed to the District Director of Internal Revenue, Audit Division, at the above address. Please cite the reference shown at top right of this letter.

Very truly yours,
/s/ Harold R. All
District Director

Enclosures:
Report of Examination
Agreement Form
Receipt Form (Form 1291)
Instructions

dgs

PRELIMINARY STATEMENT

Form 1907

Date of Report—June 12, 1959
Name of Taxpayer—Trust "A" dated 3/1/52
Name of Examiner—Roger T. Leonard

Summary of Proposed Adjustments

Year Ended	Overassessment
2/28/55	$ 1,499.57
2/29/56	1,391.97
Totals	$ 2,891.54

Net Deficiency (Overassessment)—$ (2,891.54)
Agreement Secured—No
Name of Person With Whom Findings Discussed—Mr. M. L. Davis and his attorney, Mr. William Klier
Principal Causes of Changes and other Information—The principal cause of the change in tax liability results from a decrease in taxable income.
Schedules and/or Exhibits Attached—Schedules 1 through 4—5 pages

ADJUSTMENTS TO INCOME

Form 1908

Schedule—1
Name of Taxpayer—Trust "A" dated 3/1/52
Year Ended—2/28/55

1.	Adjusted gross or taxable income reported on return or as previously adjusted		$6,465.24
(a)	Exemption	$ 100.00	$ 100.00
3.	Total—(Line 1 and items under line 2)		$6,565.24
4.	Nontaxable income and additional deductions		
(a)	Assigned Income of Maurice L. Davis per Schedules 3 of the Revenue Agent's Reports of even date on the following:		
	Harwood Homes for FYE 5/31/54:	2,779.47	
	Summerfield Homes for FYE 9/30/54	3,785.77	$6,565.24
5.	Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		$ None

COMPUTATION OF INCOME TAX—ESTATES AND TRUSTS

Form 1913

Schedule No.—2
Name of Taxpayer—Trust "A" dated 3/1/52
Year Ended—2/28/55

1.	Corrected taxable income (Schedule 1)	$ None
2.	Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)	"

3. Less:		
(A) Fiduciary's share of income tax paid to a foreign country or a United States possession		
(B) Fiduciary's share of tax paid at source on tax-free covenant bond interest		
(C) Fiduciary's share of dividends received credit		
(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)		
Total of amounts (A) through (D)		
4. Corrected income tax liability		
5. Income tax shown on return or as previously adjusted		1,499.57
6. Statutory deficiency or (overassessment)—Difference between lines 4 and 5		(1,499.57)

ADJUSTMENTS TO INCOME

Form 1908

Schedule—3

Name of Taxpayer—Trust "A" dated 3/1/52

Year Ended—2/29/56

1. Adjusted gross or taxable income reported on return or as previously adjusted		$6,106.56
2. Additional income and unallowable deductions		
(A) Exemption	$ 100.00	
(B) To Maurice L. Davis: Partnership H & D Trust	111.98	
		$ 211.98
3. Total—(Line 1 and items under line 2)		$6,318.54

4. Nontaxable income and additional deductions

(A) Assigned Income of Maurice L. Davis per Schedules 6 of the Revenue Agent's Reports of even date on the following:

Harwood Homes for F.Y.E. 5/31/55	1,165.18	
Summerfield Homes for F.Y.E. 9/30/55	5,085.72	
Per tax return — Commission Ferralloy Corp.	67.64	$6,318.54

5. Corrected adjusted gross or taxable income (line 2 minus total of items under line 4) $ None

COMPUTATION OF INCOME TAX— ESTATES AND TRUSTS

Form 1913

Schedule No.—4

Name of Taxpayer—Trust "A" dated 3/1/52

Year Ended—2/29/56

1. Corrected taxable income (Schedule 3) $ None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)
3. Less:
   (A) Fiduciary's share of income tax paid to a foreign country or a United States possession
   (B) Fiduciary's shares of tax paid at source on tax-free covenant bond interest

	(C) Fiduciary's share of dividends received credit	
	(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)	
	Total of amounts (A) through (D)	"
4.	Corrected income tax liability	"
5.	Income tax shown on return or as previously adjusted	1,391.97
6.	Statutory deficiency or (overassessment)—Difference between lines 4 and 5	(1,391.97)

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY	TOTAL

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY	TOTAL
Income	7/31/[illegible]	$1,[illegible].57		
[illegible]	[illegible]/[illegible]	$1,731.07		

SIGNATURE(S) OF TAXPAYER(S)

(SEAL)

ADDRESS OF TAXPAYER

BY

DATE

Note.—The execution and filing of this form at the address shown in the accompanying letter will expedite the assessment of your tax liability as indicated above. It is not, however, a final, closing agreement under section 7121 of the Internal Revenue Code of 1954 and does not therefore preclude the assertion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If executed with respect to a year for which a joint RETURN OF A HUSBAND AND WIFE, with them, this waiver must be signed by both spouses unless one spouse acts under a power of attorney for the other spouse.

Where the taxpayer is a corporation, the name should be signed with the corporate name followed by the signature and title of each officer authorized to sign. Evidence of authority to execute this waiver on behalf of the corporation may be required. In addition to which, the seal of the corporation must be affixed.

BEFORE THE DISTRICT DIRECTOR OF INTERNAL REVENUE
Audit Division, At Chicago, Illinois

In The Matter Of Trust "A" Dated 3-1-52 Maurice L. Davis, Trustee Chicago, Illinois	Proposed Overassessment of Income Taxes for the Fiscal Years Ended February 28, 1955 and February 29, 1956.

PROTEST
(Received Feb 15 1960)

District Director of Internal Revenue,
Audit Division,
17 North Dearborn Street,
Chicago 2, Illinois.

Sir:

Receipt is hereby acknowledged of a letter dated September 9, 1959, addressed to the above-named trust, submitting a report by Internal Revenue Agent Roger T. Leonard under date of June 12, 1959, relating to an examination of the trust's income tax returns for the fiscal years ended February 28, 1955 and February 29, 1956. This report proposes overassessments of income tax for those years in the respective amounts of $1,499.57 and $1,391.97.

The trustee does not acquiesce in the proposed overassessments, but, on the contrary, protests against the same, and, in support of his protest, alleges and states as follows:

(a). The name and address of the trust are:

Trust "A" dated 3-1-52,
Maurice L. Davis, Trustee,
33 South Clark Street,
Chicago 3, Illinois.

(b) The letter advising of the Examiner's findings was dated September 9, 1959, and bears no identifying symbols.

(c) The taxable periods involved are the fiscal years ended February 28, 1955 and February 29, 1956.

(d) The finding to which the trustee takes exception is the assignment of income to Maurice L. Davis of the trust's distributive share of the partnership net income of Harwood Homes and Summerfield Homes.

(e) The grounds upon which the taxpayer relies in connection with the exception taken are as follows:

There is being filed concurrently with this protest, a protest on behalf of Maurice L. and Helen T. Davis involving the same issues as are involved in the instant protest. The statements of fact and law pertaining to the matters under protest in the case of Maurice L. and Helen T. Davis are incorporated herein by reference, with equal force and effect as though recited herein in their entirety, in support of the exception taken by the trustee herein.

(f) The taxpayer requests that if this protest is not sustained, a hearing be had in this cause. It is further requested that a notice of said hearing be furnished to the undersigned representatives to whom duly executed power of attorney has been issued.

Respectfully submitted,
Trust "A" Dated 3-1-52
By /s/ Maurice L. Davis
Trustee

VERIFICATION

State of Illinois }
County of Cook } SS.

Maurice L. Davis, being first duly sworn, says that he is the Trustee of Trust "A" Dated 3-1-52, the above-named taxpayer; that as such he is duly authorized to execute this protest; that he has read the foregoing protest and the contents thereof, and is familiar with the statements contained therein; and that the facts stated therein are true to the best of his knowledge, information and belief.

/s/ Maurice L. Davis

Subscribed and sworn to
before me, a notary public,
this 11th day of
January, 1960.
/s/ Erwin B. Neiman
Notary Public
My commission expires 1-3-61
(Seal)

STATEMENT BY THE REPRESENTATIVE

The foregoing protest was prepared by the undersigned representative at the request and instructions of the taxpayer, and, while the facts alleged are not known personally to the representative, they were obtained from information and sources believed to be reliable.

/s/ William Klier

Altschuler, Melvoin and Glasser,
110 South Dearborn Street,
Chicago 3, Illinois.
January 5, 1960.

EXHIBIT 9
(Filed Nov 16 1961)

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX
Form 872

In Reply Refer To: AUD:FA:#15:RTL
(Received Feb 5 1959)

In pursuance of the provisions of existing Internal Revenue Laws Trust "B" Dated March 1, 1952, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 South Clark Street, Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended February 29, 1956, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "B" Dated March 1, 1952
Taxpayer.[1]

.....
Taxpayer.[1]

By /s/ Maurice L. Davis
Trustee
[Seal[2]]

H. Alan Long
District Director of Internal Revenue
By /s/ John G. Feely
Group Supervisor
Feb 5 1959

This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

U. S. Treasury Department—Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

Form 872

In Reply Refer To: AUD:FA:#15:RTL
(Received Feb 5 1959)

In pursuance of the provisions of existing Internal Revenue Laws Trust "B" Dated March 1, 1952, Maurice L. Davis, Trustee, a taxpayer (or taxpayers) of 33 South Clark Street, Chicago, Illinois, and the District Director of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended February 29, 1955, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1960, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for mking any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

Trust "B" Dated March 1, 1952
Taxpayer.[1]

.....
Taxpayer.[1]

By /s/ Maurice L. Davis
Trustee
[Seal[2]]

H. Alan Long
District Director of Internal Revenue
By /s/ John G. Feely
Group Supervisor
Feb 5 1959

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, ich as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

(Letterhead of)
U. S. TREASURY DEPARTMENT
Internal Revenue Service

In Reply Refer To
AUD:REV

Sep 9 1959

Trust "B" dated 3/1/52
Mr. Maurice L. Davis, Trustee
33 So. Clark St.
Chicago 3, Illinois

Dear Mr. Davis:

The attached report, which has been carefully reviewed by this office, discloses certain adjustments or conclu-

sions resulting from the examination of the return(s) for the taxable year(s) indicated therein.

If you accept the findings, please execute the enclosed agreement form and return it to this office promptly. If you do not accept the findings, you may, WITHIN 30 DAYS from the date of this letter, file a protest in accordance with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the Regional Commissioner's office.

Submission of the agreement form will expedite the allowance of the proposed overassessment. If upon the expiration of the 30-day period you have not submitted the agreement form or a written protest, recommendation will then be made for the issuance of a certificate for the proposed overassessment.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

It is essential that your protests or agreements be addressed to the District Director of Internal Revenue, Audit Division, at the above address. Please cite the reference shown at top right of this letter.

Very truly yours,
/s/ Harold R. All
District Director

Enclosures:
Report of Examination
Agreement Form
Receipt Form (Form 1291)
Instructions

br

PRELIMINARY STATEMENT

Form 1907	Date Of Report
	June 12, 1959
Name Of Taxpayer	Name Of Examiner
Trust "B" dated 3/1/52	Roger T. Leonard

Summary Of Proposed Adjustments

Year Ended	Income Tax Overassessment
2/28/55	$1,499.57
2/29/56	1,391.97
Totals	$2,891.54

Net Deficiency (Overassessment)	Agreement Secured
$(2,891.54)	No

Name Of Person With Whom Findings Discussed

Mr. M. L. Davis and his attorney, Mr. William Klier

Principal Causes Of Changes, And Other Information

The principal cause of the change in tax liability results from a decrease in taxable income.

Schedules And/Or Exhibits Attached

Schedules 1 through 4—5 pages

ADJUSTMENTS TO INCOME

Form 1908	Schedule 1
Name Of Taxpayer	Year Ended
Trust "B" dated 3/1/52	2/28/55

1.	Adjusted gross or taxable income reported on return or as previously adjusted		$6,465.24
2.	Additional income and unallowable deductions		
	(a) Exemption	$ 100.00	
			$ 100.00
3.	Total (Line 1 and items under line 2)		$6,565.24

4. Nontaxable income and additional deductions		
(a) Assigned Income of Maurice L. Davis per Schedules 3 of the Revenue Agent's Reports of even date on the following:		
Harwood Homes for F.Y.E. 5/31/54	$2,779.47	
Summerfield Homes for for F.Y.E. 9/30/54	3,785.77	$6,565.24
5. Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		$ None

COMPUTATION OF INCOME TAX—
ESTATES AND TRUSTS

Form 1913	Schedule No. 2
Name Of Taxpayer	Year Ended
Trust "B" dated 3/1/52	2/28/55
1. Corrected taxable income (Schedule 1)	$ None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12 below)	"
3. Less:	
(A) Fiduciary's share of income tax paid to a foreign country or a United States possession	
(B) Fiduciary's share of tax paid at source on tax-free covenant bond interest	
(C) Fiduciary's share of dividends received credit	

(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)		
Total of amounts (A) through (D)		"
4. Corrected income tax liability		"
5. Income tax shown on return or as previously adjusted		1,499.57
6. Statutory deficiency or (overassessment) Difference between lines 4 and 5		(1,499.57)

ADJUSTMENTS TO INCOME

Form 1908		Schedule 3
Name Of Taxpayer		Year Ended
Trust "B" dated 3/1/52		2/29/56
1. Adjusted gross or taxable income reported on return or as previously adjusted		$6,106.56
2. Additional income and unallowable deductions		
(a) Exemption	$ 100.00	
(b) To Maurice L. Davis: Partnership H & D Trust	111.98	
		$ 211.98
3. Total (Line 1 and items under line 2)		$6,318.54
4. Nontaxable income and additional deductions		
(a) Assigned Income of Maurice L. Davis per Schedules 6 of the Revenue Agent's Reports of even date on the following:		
Harwood Homes for F.Y.E. 5/31/55	$1,165.18	
Summerfield Homes for F.Y.E. 9/30/55	5,085.72	

Per tax return—Commission Feralloy Corp.	67.64	$6,318.54
5. Corrected adjusted gross or taxable income (Line 3 minus total of items under line 4)		$ None

COMPUTATION OF INCOME TAX—ESTATES AND TRUSTS

Form 1913 — Schedule No. 4

Name Of Taxpayer — Year Ended

Trust "B" dated 3/1/52 — 2/29/56

1. Corrected taxable income (Schedule 3)	$ None
2. Tax on amount shown on line 1 or alternative tax, if less (From line 12. below)	"
3. Less:	
(A) Fiduciary's share of income tax paid to a foreign country or a United States possession	
(B) Fiduciary's share of tax paid at source on tax-free covenant bond interest	
(C) Fiduciary's share of dividends received credit	
(D) Fiduciary's share of credit for partially tax-exempt interest (Subject to limitation)	
Total of amounts (A) through (D)	"
4. Corrected income tax liability	"
5. Income tax shown on return or as previously adjusted	1,391.97
6. Statutory deficiency or (overassessment) Difference between lines 4 and 5	(1,391.97)

Exhibit 9

Trust "B" dated 3/1/52 Chicago

SEP 9 · 1959

U S TREASURY DEPARTMENT · INTERNAL REVENUE SERVICE

FORM 870
(REV. NOV. 1957)
TRANSLUCENT

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT

DATE RECEIVED BY INTERNAL REVENUE SERVICE

Pursuant to section 6213(d) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws, the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the tax as provided by law, and the following overassessments are accepted as correct:

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY		TOTAL
Income	2/28/55	$1,499.57			$1,499.57
Income	2/29/56	1,191.97			1,191.97

SIGNATURE(S) OF TAXPAYER(S)

(SEAL)

ADDRESS OF TAXPAYER

BY

DATE

Note.—The execution and filing of this form at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code of 1954, and does not, therefore, preclude the assertion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this form must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

Where the taxpayer is a corporation, the form shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

U S GOVERNMENT PRINTING OFFICE : 1958 O - 488181

Before The District Director Of Internal Revenue
Audit Division, At Chicago, Illinois

In The Matter Of Trust "B" Dated 3-1-52 Maurice L. Davis, Trustee Chicago, Illinois	Proposed Overassessment of Income Taxes for the Fiscal Years Ended February 28, 1955 and February 29, 1956.

PROTEST

District Director of Internal Revenue,
Audit Division,
17 North Dearborn Street,
Chicago 2, Illinois.

Sir:

Receipt is hereby acknowledged of a letter dated September 9, 1959, addressed to the above named trust, submitting a report by Internal Revenue Agent Roger T. Leonard under date of June 12, 1959, relating to an examination of the trust's income tax returns for the fiscal years ended February 28, 1955 and February 29, 1956. This report proposes overassessments of income tax for those years in the respective amounts of $1,499.57 and $1,391.97.

The trustee does not acquiesce in the proposed overassessments, but, on the contrary, protests against the same, and, in support of his protest, alleges and states as follows:

(a) The name and address of the trust are

Trust "B" dated 3-1-52,
Maurice L. Davis, Trustee,
33 South Clark Street,
Chicago 3, Illinois.

(b) The letter advising of the Examiner's findings was dated September 9, 1959, and bears no identifying symbols.

(c) The taxable periods involved are the fiscal years ended February 28, 1955 and February 29, 1956.

(d) The finding to which the trustee takes exception is the assignment of income to Maurice L. Davis of the trust's distributive share of the partnership net income of Harwood Homes and Summerfield Homes.

(e) The grounds upon which the taxpayer relies in connection with the exception taken are as follows:

There is being filed concurrently with this protest, a protest on behalf of Maurice L. and Helen T. Davis involving the same issues as are involved in the instant protest. The statements of fact and law pertaining to the matters under protest in the case of Maurice L. and Helen T. Davis are incorporated herein by reference, with equal force and effect as though recited herein in their entirety, in support of the exception taken by the trustee herein.

(f) The taxpayer requests that if this protest is not sustained, a hearing be had in this cause. It is further requested that a notice of said hearing be furnished to the undersigned representatives to whom duly executed power of attorney has been issued.

Respectfully submitted,
Trust "B" Dated 3-1-52
By /s/ Maurice L. Davis
Trustee

VERIFICATION

State of Illinois }
County of Cook } ss

Maurice L. Davis, being first duly sworn, says that he is the Trustee of Trust "B" Dated 3-1-52, the above-named taxpayer; that as such he is duly authorized to execute this protest; that he has read the foregoing protest and the contents thereof, and is familiar with the statements contained therein; and that the facts stated herein are true to the best of his knowledge, information and belief.

Maurice L. Davis

Subscribed and sworn to
before me, a notary public,
this 11th day of
January, 1960.

Erwin B. Neiman
Notary Public

My commission expires 1-3-61
(Seal)

STATEMENT BY THE REPRESENTATIVE

The foregoing protest was prepared by the undersigned representative at the request and instructions of the taxpayer, and, while the facts alleged are not known personally to the representative, they were obtained from information and sources believed to be reliable.

William Klier

Altschuler, Melvoin and Glasser,
110 South Dearborn Street,
Chicago 3, Illinois.
January 5, 1960.

EXHIBIT 10

(Filed Nov 16 1961)

August 23, 1960

Internal Revenue Service
Appellate Division
P. O. Box FF
Chicago 90, Illinois
Attention: Mr. Joseph A. Elbow

Re: Maurice L. and Helen T. Davis

Gentlemen:

Pursuant to conference held here August 7, 1960, we are enclosing herewith the following documents:

1. Agreement for Dissolution of Partnership of H. & R. Builders
2. Financial Statements of H. & R. Builders as of November 30, 1953.

Very truly yours,
Altschuler, Melvoin and Glasser
William Klier

WK:ew
Encls.

United States Of America)
Northern District Of Illinois) ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify to the United States Court of Appeals, for the Seventh Circuit, that the documents submitted herewith and annexed hereto are the original papers filed and entered of record in my office on the dates designated in the table of contents, and together with a true copy of the docket entries as they appear in the official docket in this office, and the original exhibits and the Clerk's File Copy of the Transcript of Proceedings, transmitted herewith, under separate certificate, for the sake of convenience, constitute the record on appeal in the matter of The Application For Enforcement Of Summonses Issued By The Commissioner of Internal Revenue to Maurice L. And Helen T. Davis, Individually and Maurice L. Davis, as Trustee of Trusts "A" and "B", dated March 1, 1952 and Trusts "A", "B", "C" and "D", dated October 1, 1952, No. 61 C 1502.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 21st day of November, 1961.

Roy H. Johnson Clerk
By /s/ Gizella Butcher
Gizella Butcher, Deputy Clerk

(Seal)

58

IN THE UNITED STATES DISTRICT COURT

Tuesday, September 26, 1961
Present: Honorable Michael L. Igoe
District Judge

* * (Caption—No. 61 C 1502) * *

This cause coming on for rule to show cause issued herein directed to Maurice L. Davis, the parties come in person and or by counsel; said hearing is held and evidence introduced and it is

Ordered that this cause be and it hereby is continued to September 27, 1961 at 2 P.M., for ruling herein.

59

UNITED STATES DISTRICT COURT

* * (Caption—No. 61 C 1502) * *

ORDER

This matter having come on for hearing on the petition of Romuald M. Soja, Internal Revenue Agent, a duly authorized delegate of the Secretary of the Treasury, by James P. O'Brien, United States Attorney for the Northern District of Illinois, and the Court having jurisdiction of the subject matter and persons herein, and the

Court being fully advised in the premises upon a hearing on the merits, testimony having been received and evidence produced,

It Is Determined That:

1. Pursuant to Sections 7602 and 7603, Internal Revenue Code of 1954, the Commissioner of Internal Revenue, a delegate of the Secretary of the Treasury of the United States, by and through Romuald M. Soja, Internal Revenue Agent, personally served summonses upon the respondents Maurice L. Davis, as an individual; and upon Maurice L. Davis as Trustee of Trusts "A" and "B", dated March 1, 1952, and Trusts "A", "B", "C", and "D", dated October 1, 1952, on the 12th day of July, 1961, requiring the respondents to appear and to produce certain books and records and other documents on the 24th day of July, 1961, at the Internal Revenue Service Office, 17 North Dearborn Street, Chicago, Illinois.

60 2. The respondent, Maurice L. Davis, as an individual, failed to comply with said summons in that he did not produce his books and records and other documents at the time and place appointed, as required by said summons.

3. The respondent, Maurice L. Davis, as Trustee of Trust "A" dated March 1, 1952, failed to comply with said summons in that he did not produce a copy of the partnership agreement for the H & R Builders partnership, of which Edward Hochman, Haskell Richards, Maurice L. Davis, as Trustee of Trust "A" dated March 1, 1952, and Maurice L. Davis, as Trust of Trust "B" dated March 1, 1952, were members, nor did he produce copies of all partnership returns filed by H & R Builders from date of organization to date of dissolution, nor did he produce any books and records of H & R Builders part-

nership, at the time and place appointed, as required by said summons.

4. The respondent, Maurice L. Davis, as Trustee of Trusts "A" and "B" dated March 1, 1952, failed to comply with said summonses in that he did not produce the books and records of said trusts for the taxable years ended February 28, 1953, February 28, 1954, February 28, 1955 and February 29, 1956, at the time and place appointed, as required by said summonses.

5. The respondent, Maurice L. Davis, as Trustee of Trusts "A", "B", "C", and "D" dated October 1, 1952, failed to comply with said summonses in that he did not produce the books and records of the trusts for the taxable years ended September 30, 1953, September 30, 1954 and September 30, 1955, at the time and place appointed, as required by said summonses.

61 6. The Internal Revenue Service is investigating the internal revenue tax liability to the United States of America of Maurice L. and Helen T. Davis for their taxable years ending in 1954 and 1955.

7. There are reasonable grounds for believing that the books and records requested contain information important and material to the said investigation now being conducted by the Internal Revenue Service.

Therefore, It Is Hereby Ordered that Maurice L. Davis, as an individual, and Maurice L. Davis as Trustee of Trusts "A" and "B" dated March 1, 1952 and Trusts "A", "B", "C", and "D" dated October 1, 1952, comply with said summons by simultaneously producing all of those books and records requested by said summonses which he has in his possession or control for examination to Internal Revenue Agent Romuald M. Soja, at Room 1426, 17 North Dearborn Street, Chicago, Illinois, on or before 1:00 P.M.

September 29, 1961, said examination to continue from time to time until completed.

Enter:
/s/ Igoe
Judge.

Date: September 27, 1961.

62

UNITED STATES DISTRICT COURT

(Caption—No. 61 C 1502)

NOTICE OF APPEAL
Filed—Sep 28 1961

To: James P. O'Brien,
United States Attorney
United States Court House
Chicago, Illinois
Attorney for the Commissioner
of Internal Revenue (on the
Petition of Romuald M. Soja).

Notice is hereby given that Maurice L. and Helen T. Davis, individually, and Maurice L. Davis, as Trustee of Trusts "A" and "B" dated March 1, 1952, and Trusts "A", "B", "C", and "D" dated October 1, 1952, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the final judgment in favor of The Commissioner of Internal Revenue (on the Petition of Romuald M. Soja, Internal Revenue Agent, a duly authorized delegate of the Secretary of the Treasury) entered by this Court on September 27, 1961.

/s/ Walter J. Rockler
Walter J. Rockler
Attorney for
Respondents-Appellants.

Dated: September 28, 1951.

63 Walter J. Rockler
Suite 2900,
105 West Adams Street,
Chicago 3, Illinois
FRanklin 2-6275.

64

United States of America
Northern District of Illinois } SS:

• • (Caption—No. 61 C 1502) • •

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on September 28, 1961, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

James P. O'Brien, U.S. Atty.
450 U.S. Court House
Chicago 4, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of September, 1961.

Roy H. Johnson
Clerk

By /s/ Anne I. Mraz
Anne I. Mraz
Deputy Clerk.

(Seal)

65

UNITED STATES DISTRICT COURT

(Caption—No. 61 C 1502)

NOTICE

Filed—Sep 29 1961

To: James P. O'Brien
United States Attorney
United States Court House
Chicago, Illinois,
Attorney for The Commissioner
of Internal Revenue (on the
Petition of Romuald M. Soja).

Please Take Notice that I have entered my Appearance as counsel for Respondents-Appellants in the above-entitled matter, and that I have this date filed a Notice of Appeal on their behalf, copies of said Appearance and Notice being served on you herewith.

And Please Take Notice Further that on Friday, September 29, 1961 at 10:00 A.M. or as soon thereafter as I may be heard, I shall appear before the Hon. Michael L. Igoe, one of the Judges of said Court, in the courtroom usually occupied by him in the United States Court House in Chicago, Illinois, and then and there move the

66 Court, on behalf of Respondents-Appellants to stay the enforcement of the judgment in this action pending the disposition of Respondents' appeal to the Court of Appeals for the Seventh Circuit, Notice of Appeal having been filed September 28, 1961, and to fix the amount of bond required to be filed by Respondents.

Dated: September 28, 1961.

/s/ Walter J. Rockler
Walter J. Rockler
Attorney for
Respondents-Appellants.

Suite 2900
105 West Adams Street,
Chicago 3, Illinois
FRanklin 2-6275.

Received a copy of the foregoing Notice and the attached appearance and Notice of Appeal this 28th day of September 1961, at 4:35 P.M.

/s/ James P. O'Brien
Attorney for
Petitioner-Appellee.

67

IN THE UNITED STATES DISTRICT COURT

Friday, September 29, 1961
Present: Honorable Michael L. Igoe
District Judge

(Caption—No. 61 C 1502)

Come the Respondents by counsel and present their supersedeas bond for approval and it appearing that said bond is properly conditioned and in the amount fixed by the Court, to wit: in the sum of Two Hundred Fifty ($250.00) Dollars and that the sureties are good and sufficient security for said amount it is

Ordered by the Court that said bond be and the same hereby is approved and ordered to be filed with the Clerk of this Court.

68

UNITED STATES DISTRICT COURT

(Caption—No. 61 C 1502)

ORDER

This matter being heard on the motion of Respondents for a stay pending Respondents' appeal to the United States Court of Appeal for the Seventh Circuit, and to fix the amount of supersedeas bond required to be filed by Respondents, and it appearing to the Court that there is no objection by the attorney for the Commissioner of Internal Revenue (on the Petition of Romuald M. Soja, Internal Revenue Agent, a duly authorized delegate of the Secretary of the Treasury), and that such stay should be granted,

It Is Ordered that the enforcement of judgment and all proceedings in the above-entitled cause be stayed pending the hearing and determination of the said appeal and the coming down to this Court of the mandate of the United States Court of Appeals for the Seventh Circuit, upon

69 filing by the plaintiffs of a supersedeas bond for Two Hundred and Fifty Dollars ($250.00), approved by the Judge of this Court, said bond to stand as security in this cause.

Dated: September 29, 1961.

ENTER:

/s/ Igoe

Judge.

70

UNITED STATES DISTRICT COURT

• • (Caption—No. 61 C 1502) • •

STATEMENT PURSUANT TO RULE 12(d).

Filed—Oct 10 1961

1. The name of the appellee is:
   Romuald M. Soja,
   Internal Revenue Agent.
2. Counsel for the appellee are:
   Louis F. Oberdorfer,
   Assistant Attorney General,
   Department of Justice,
   Washington 25, D.C.
   Lee A. Jackson, Attorney,
   Department of Justice,
   Washington 25, D.C.
   James P. O'Brien,
   United States Attorney,
   Room 450, U.S. Court House,
   Chicago 4, Illinois.
   J. P. Lulinski,
   Assistant United States Attorney,
   Appellate Division,
   Room 450, U.S. Court House,
   Chicago 4, Illinois.
   H. T. Sanders,
   Assistant United States Attorney,
   Room 450, U.S. Court House,
   Chicago 4, Illinois.

Respectfully submitted,
/s/ James P. O'Brien
James P. O'Brien
United States Attorney.

71 **AFFIDAVIT OF MAILING**

State of Illinois }
County of Cook } ss.

Bruno W. Talin, Being first duly sworn, on oath deposes and says that he is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 10th day of October, 1961, he placed a copy of a Statement Pursuant To Rule 12(d), in a Government franked envelope addressed to:

Walter J. Rockler,
Attorney-at-Law,
105 W. Adams St., Suite 2900,
Chicago 3, Illinois.

and that he placed said envelope in the United States mail chute located in the United States Court House, Chicago, Illinois, on said date at the hour of about 5:00 P.M.

Bruno W. Talin

Subscribed and Sworn to before me,
this 10th day of October, 1961.
/s/ Steve Babyar
Notary Public.
(Seal)

72

UNITED STATES DISTRICT COURT

• • (Caption—No. 61 C 1502) • •

(Filed Oct 30 1961)

To: The Clerk of the
United States District Court
United States Court House
Chicago, Illinois

Please Prepare A Record On Appeal in the above-entitled cause consisting of all the original papers and the transcript of hearing, September 26, 1961, and forward said record to the Clerk of the United States Court of Appeals, Seventh Circuit.

/s/ Walter J. Rockler
Walter J. Rockler
Attorney for Appellant.

Suite 2900
105 West Adams Street,
Chicago 3, Illinois
FRanklin 2-6275.

73

IN THE UNITED STATES DISTRICT COURT

Monday, November 6, 1961

Present: Honorable Michael L. Igoe, District Judge

(Caption—No. 61 C 1502)

On motion of the respondents, it is

Ordered that the time in which the respondents may file the record on appeal be and hereby is extended until November 21, 1961.

76 United States of America }
Northern District of Illinois } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify and transmit as part of the record on appeal to the United States Court of Appeals, for the Seventh Circuit, in the cause entitled: In The Matter Of The Application For Enforcement Of Summonses Issued By The Commissioner Of Internal Revenue To Maurice L. And Helen T. Davis, Etc., No. 61 C 1502, the following, to wit:

Clerk's file copy of the transcript of proceedings had before the Honorable Michael L. Igoe, Judge, on September 26, 1961, and filed by the Official Court Reporter, November 2, 1961.

Government's Group Exhibit 1, filed November 14, 1961.

Exhibits marked 3 thru 10 inclusive, filed November 16, 1961.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 21st of November, 1961.

Roy H. Johnson
By /s/ Gizella Butcher
Gizella Butcher,
Deputy Clerk.

(Seal)

[fol. 194]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

September Term, 1961—April Session, 1962

No. 13558

On Appeal from the Order of the United States District Court for the Northern District of Illinois.

IN THE MATTER OF THE APPLICATION FOR ENFORCEMENT OF SUMMONSES ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE TO MAURICE L. AND HELEN T. DAVIS, Individually and MAURICE L. DAVIS, as Trustee of Trusts "A" and "B", dated March 1, 1952, and Trusts "A", "B", "C" and "D", dated October 1, 1952.

ROMUALD M. SOJA, Internal Revenue Agent,
Petitioner-Appellee,

v.

MAURICE L. and HELEN T. DAVIS, Individually and MAURICE L. DAVIS, as Trustee of Trusts "A" and "B", dated March 1, 1952, and Trusts "A", "B", "C" and "D", dated October 1, 1952, Respondents-Appellants.

OPINION—May 14, 1962

Before Hastings, Chief Judge, and Knoch and Castle, Circuit Judges.

CASTLE, Circuit Judge. This is an appeal from an order of the District Court directing the appellant,[1] Maurice [fol. 195] L. Davis, as an individual and as the trustee of six specified trusts, to comply with eight summonses issued

---

[1] Helen T. Davis, appellant's wife, is not a party to this action.

by the Internal Revenue Service calling for the production of certain books and records. Appellant had appeared before the Internal Revenue Agent but refused to produce the information or records called for in the summonses. Appellee filed a petition in the District Court pursuant to the provisions of 26 U.S.C.A. 7604 praying that a writ of attachment issue to bring appellant before the court to show cause why he should not be held for contempt for failure to comply with the summonses of the Commissioner of Internal Revenue. The appellant filed an answer and, after a hearing, the District Court entered the order from which this appeal is prosecuted.

The government contends that the order appealed from is interlocutory and that therefore this Court lacks jurisdiction of this appeal. Our agreement with the government's contention is dispositive of the appeal and makes it unnecessary for us to consider other issues raised by the parties.

The decision of this Court in *Jaycki* v. *Whetstone*, 7 Cir., 192 F. 2d 121 is a controlling precedent on the issue here presented. We had occasion to point out in *United States* v. *Vivian*, 7 Cir., 217 F. 2d 882, that the rationale of *Whetstone* is grounded on the nature of the specific statutory provision here involved. 7604 provides "for an attachment against [the recusant witness] as for a contempt". The proceedings is one for contempt and the order to testify and produce the records designated is but an interlocutory step to afford the witness an opportunity to purge himself. It is not the "end of a proceeding begun against the witness". *Cf. Ellis* v. *Interstate Commerce Commission*, 237 U.S. 434, 442. In *Cobbledick* v. *United States*, 309 U.S. 323, it was recognized (p. 329) that procedures for the enforcement of subpoenas may differ and that where a statutory proceeding afforded for the enforcement of an administrative subpoena terminates with the order directing compliance such an order is final and reviewable. But such is not the case with a contempt proceeding initiated pursuant to 7604. Such proceeding is not terminated by an order directing compliance.

And, contrary to appellant's contention, our decision in *McDermott* v. *John Baumgarth Company*, 7 Cir., 286 F. [fol. 196] 2d 864, is not a rejection of *Whetstone*. There the government's appeal was from an order directing that books and records be returned to the taxpayer[2] but that the Internal Revenue agents be given access to certain of them. The order was a complete and final rejection of the government's claimed right to continued possession of the books and records and the relief it sought to obtain and in substance terminated the proceeding.

We are cognizant that other Circuits have held that an order directing compliance entered pursuant to §7604 is final and appealable within the meaning of 28 U.S.C.A. §1291.[3] In our considered judgment the opinions embodying such rulings have failed to recognize the distinction between a contempt proceeding initiated pursuant to §7604 —which is not terminated by the order directing compliance—and other types of statutory enforcement procedures in which the enforcement order is the end of the proceeding, complete in itself, and the order, if not obeyed, the basis for a contempt adjudication in a separate proceeding.

Appellant's appeal is dismissed for lack of jurisdiction.

Appeal Dismissed.

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[2] The taxpayer asserted by way of cross-appeal that the government had failed to establish a right to examination of the books and records to which it was accorded access under the order. This Court rejected the taxpayer's contention and affirmed the order without discussion of the Court's jurisdiction of the cross-appeal.

[3] *O'Conner* v. *O'Connell*, 1 Cir., 253 F. 2d 365; *In re Albert Lindley Lee Memorial Hospital*, 2 Cir., 209 F. 2d 122; *Falsone* v. *United States*, 5 Cir., 205 F. 2d 734; *Brownson* v. *United States*, 8 Cir., 32 F. 2d 844. Cf. *Wall* v. *Mitchell*, 4 Cir., 287 F. 2d 31, where the question was not raised.

[fol. 197]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before: Hon. John S. Hastings, Chief Judge, Hon. Win G. Knoch, Circuit Judge, Hon. Latham Castle, Circuit Judge.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 13558

In the Matter of the Application for Enforcement of Summonses issued by the Commissioner of Internal Revenue, etc.

ROMUALD M. SO[illegible], Internal Revenue Agent,
Petitioner-Appellee,

vs.

MAURICE L. and HELEN T. DAVIS, etc.,
Respondents-Appellants.

JUDGMENT—May 14, 1962

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that appellants' appeal from an order of the said District Court in this cause be, and the same is hereby, Dismissed for lack of jurisdiction, in accordance with the opinion of this Court filed this day.

[fol. 198] Clerk's Certificate (omitted in printing).

[fol. 199]

SUPREME COURT OF THE UNITED STATES

No. 271—October Term, 1962

MAURICE L. DAVIS, etc., Petitioner,

vs.

ROMUALD M. SOJA, etc.

ORDER ALLOWING CERTIORARI—October 8, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Goldberg took no part in the consideration or decision of this petition.

Office Supreme Court, U.S.
FILED
JUL 23 19
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 271

MAURICE L. DAVIS, Individually and as Trustee,
Petitioner,

vs.

ROMUALD M. SOJA, Internal Revenue Agent,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

WALTER J. ROCKLER
One North LaSalle Street
Chicago 2, Illinois
Attorney for Petitioner

The Scheffer Press, Inc.—ANdover 3-6850

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Annual Report 1961 of Commissioner of Internal Revenue 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No.

MAURICE L. DAVIS, Individually and as Trustee,
Petitioner,

vs.

ROMUALD M. SOJA, Internal Revenue Agent,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner Maurice L. Davis prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in this case on May 14, 1962.

OPINIONS BELOW.

The opinion of the Court of Appeals for the Seventh Circuit is attached to the certified copy of the record after numbered page 193 and is reprinted in Appendix B hereto, pages 4a-6a. This opinion has not been officially reported as yet, but is unofficially reported at 9 A.F.T.R. 2d 1526. The order and opinion of the District Court is set forth in the certified copy of the record at pages 182-185, is reprinted in Appendix B hereto, pages 7a-9a, and is unreported.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 14, 1962. A petition for rehearing has not been filed. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1), 62 Stat. 928.

QUESTION PRESENTED.

The respondent Romuald M. Soja brought an action against the petitioner in the District Court seeking to require the petitioner to show cause why he should not be held in contempt for failure to obey an Internal Revenue Service summons, and requesting a Court order to compel compliance with the summons. After a brief hearing, the District Court ordered the petitioner to comply with the summons. Dismissing the petitioner's appeal from the District Court order, the Court of Appeals held that the order was interlocutory and non-appealable. The question presented is—

Whether a District Court order, pursuant to an action brought under Section 7604 of the Internal Revenue Code of 1954 (26 U.S.C. Sec. 7604), which directs compliance with a summons, is final and appealable under Section 1291 of Title 28 of the United States Code.

STATUTES INVOLVED.

The statutes involved are Section 1291 of the Judicial Code (28 U.S.C. Sec. 1291) and Sections 7602 and 7604 of the Internal Revenue Code of 1954 (26 U.S.C. Secs. 7602, 7604). The provisions of these statutes are reprinted in Appendix A hereto, at pages 1a-2a.

STATEMENT OF FACTS.

The respondent Romuald M. Soja, Internal Revenue Agent, on July 12, 1961 served eight summonses requir-

ing the petitioner to appear twelve days later at the offices of the Internal Revenue Service and to produce there for examination the extensive books, records and documents designated in the summonses. (R. 7-21, Exhs. "A" through "H" to the respondent's petition to the District Court). The petitioner appeared at the designated time and place but refused to produce the books, records and documents demanded, maintaining that the summonses were improper and without legal authority. (R. 22, 25-26, 39).

In a petition filed in the District Court on September 7, 1961, the respondent requested that "in accordance with provisions of Section 7604, Internal Revenue Code of 1954", a writ of attachment be issued requiring the petitioner to show cause why he should not be held for contempt and requesting that the Court order the petitioner to comply with the summonses. (R. 4-7). In answer to the petition, the petitioner (the respondent in the District Court) set forth the factual and legal grounds, based on the provisions of Sections 7602 and 7605(b) of the Internal Revenue Code of 1954, for his refusal to comply with the demands of the summonses. (R. 24-29). A short hearing was held in the District Court on September 26, 1961. (R. 32-59). On September 27, 1961, the District Court ordered the petitioner to comply with the summonses within two days. (R. 182-185) The petitioner immediately, on September 28, 1961, filed an appeal to the Court of Appeals for the Seventh Circuit. (R. 185). The Court of Appeals dismissed the appeal on the ground of lack of jurisdiction, holding that the order was interlocutory.

No writ of attachment was ever issued by the District Court and no arrest was made. (R. 1). The District Court did not adjudge the petitioner to be in contempt of administrative authority or otherwise in contempt.

REASONS FOR GRANTING THE WRIT.

I. The decision of the Court of Appeals, denying jurisdiction over the petitioner's appeal from the District Court order, is in direct conflict with decisions of several other Courts of Appeal and decisions of this Court.

The judgment of the Court of Appeals for the Seventh Circuit is squarely in conflict with decisions of several other Courts of Appeal. *O'Connor* v. *O'Connell*, 253 F. 2d 365, 365-367 (C.A. 1, 1958); *Mosseller* v. *United States*, 158 F. 2d 380, 383 (C.A. 2, 1946); *In re Albert Lindley Lee Memorial Hospital*, 209 F. 2d 122, 123 (C.A. 2, 1953), cert. den. sub nom. *Cincotta* v. *United States*, 347 U.S. 960 (1954); *Wall* v. *Mitchell*, 287 F. 2d 31 (C.A. 4, 1961); *Falsone* v. *United States*, 205 F. 2d 734, 737 (C.A. 5, 1953), cert. den. 346 U.S. 864 (1953); *Brownson* v. *United States*, 32 F. 2d 844, 845-846 (C.A. 8, 1929); *Martin* v. *Chadis Securities Co.*, 128 F. 2d 731, 734 (C.A. 9, 1942). These other Courts of Appeal have held that a District Court order to comply with an Internal Revenue Service summons is a final and appealable decision. The decisions, cited above, of the other Courts of Appeal cannot be reconciled with the decision of the Seventh Circuit Court below.

This sharp conflict was noted by the Court of Appeals below, in its opinion as follows:

> "We are cognizant that other Circuits have held that an order directing compliance entered pursuant to §7604 is final and appealable within the meaning of 28 U.S.C.A. §1291. In our considered judgment the opinions embodying such rulings have failed to recognize the distinction between a contempt proceeding initiated pursuant to §7604—which is not terminated

> by the order directing compliance—and other types of statutory enforcement procedures in which the enforcement order is the end of the proceeding, complete in itself, and the order, if not obeyed, the basis for a contempt adjudication in a separate proceeding."

Appendix B, *infra*, p. 6a.

In a recent case, the Court of Appeals for the Second Circuit also observed that the Court of Appeals for the Seventh Circuit has taken a unique view of the question of appellate jurisdiction in situations involving the enforcement of Internal Revenue Service summonses:

> "Applying that distinction, we have held that an order under §7404(a), 26 U.S.C.A. §7404(a), directing a person to testify is final and appealable, under 28 U.S.C.A. §1291 . . . (citations) . . . thereby necessarily joining the Fifth Circuit in its expressed disagreement with *Jarecki* v. *Whetstone*, 7 Cir., 1951, 192 F. 2d 121, which the Government nevertheless urges upon us here."

Application of Colton, 291 F. 2d 487, at p. 491 (C.A. 2, 1961); see also *O'Connor* v. *O'Connell*, 253 F. 2d 365, at p. 367 (C.A. 5, 1958).

Apart from the absolute inconsistency between the decision of the Court below and decisions of six other Courts of Appeals, it is believed that the decision of the Court of Appeals for the Seventh Circuit contradicts the opinions and reasoning of this Court in *Interstate Commerce Commission* v. *Brimson*, 154 U.S. 447, 489 (1894), *Ellis* v. *Interstate Commerce Commission*, 237 U.S. 434, 442 (1915); *First National Bank of Mobile* v. *United States*, 267 U. S. 576 (1925); and *Cobbledick* v. *United States*, 309 U.S. 323, 328-330 (1940). In these cases, this Court recognized that an order directing compliance with an administrative sum-

mons was final and reviewable. The provisions allowing enforcement of a Treasury summons under Section 7604 of the Internal Revenue Code do not endow compliance orders with any unusual characteristics from the standpoint of appealability and do not alter or modify the application of Section 1291 to such orders.

II. This case presents an important question affecting the administration of the internal revenue laws and the appellate jurisdiction of the federal courts.

The problems of audit and examination of tax returns by the Internal Revenue Service have multiplied in recent years, as the population of the United States and the revenue requirements of the federal government have increased and as the threshold of federal income taxation has been lowered. For the fiscal year ended June 30, 1961, more than 95,000,000 returns, including more than 61,000,000 individual income tax returns, were filed with the Internal Revenue Service, *Annual Report 1961 of Commissoner of Internal Revenue* (Washington, G.P.O., 1961), pp. 19, 128. The Internal Revenue Service examined almost 3,500,000 returns in that year, *Annual Report, op. cit.*, p. 27. Obviously it is highly important that the scope of the Service's authority to examine taxpayers' books and records, and limitations thereon under various circumstances, receive the fullest and most careful judicial consideration, both from the standpoint of taxpayers and of the Service.

In recent years there has been a swelling volume of litigation arising from the Internal Revenue Service's efforts to enforce summonses or taxpayers' efforts to limit summonses. Many of these cases have presented issues requiring and receiving detailed, careful consideration from the various Courts of Appeals. See, *e.g.*, *Falsone* v. *United States*, 205 F. 2d 734 (C.A. 5, 1953). District Court deci-

sions in different sections of the country are frequently in conflict with each other. Compare, as to the standing of a taxpayer to complain of a summons, *Arend* v. *De Masters*, 181 F. Supp. 761 (D.C. Ore. 1960) with *Albachten* v. *Corbett*, 156 F. Supp. 863 (D.C. Calif. 1957). These conflicts may well be reduced upon review by the Courts of Appeal. In the Courts of every Circuit which have considered the matter, except the Seventh Circuit, the right of appeal and review is recognized as a matter of course.

It is clearly desirable that orderly and uniform channels of judicial review prevail in all parts of the United States with respect to the scope and exercise of powers of such broad consequence to the federal tax system and to all of the citizens of the United States. Furthermore, it is equally important that the fundamental statute governing appeals from the district courts to the courts of appeal in the federal judicial system receive a consistent interpretation.

The question of reviewability in this situation has a public significance extending well beyond the immediate concerns of the parties. In the light of the decision below, action by this Court is required in order to establish consistency and uniformity in these important areas.

III. The decision of the Court of Appeals is in error.

The decision of the Court of Appeals below follows and affirms that Court's decision in the case of *Jarecki* v. *Whetstone*, 192 F. 2d 121 (1951). In both cases the Court has held that the compliance order of the District Court is interlocutory. As the opinion in the *Whetstone* case particularly makes clear, the interlocutory character of the order is founded on an analogy to examination of witnesses in the course of, or ancillary to, litigation that otherwise con-

tinues. *Cf. O'Malley* v. *Chrysler Corporation*, 160 F. 2d 35 (1947), cited as a basis for the *Whetstone* decision. 192 F. 2d at page 124.

Where an issue of the examination of a witness or his records has arisen in the course of a *continuing* judicial action, the disposition of that issue by order is "interlocutory" because the basic judicial action has not terminated. However, the courts have almost invariably recognized that an independent judicial proceeding which presents the issue of right of examination, is at an end when a decision on that issue disposes of it. *Ellis* v. *Interstate Commerce Commission*, 237 U.S. 434 (1915); *Cobbledick* v. *United States*, 309 U.S. 323 (1940); *Penfield Co.* v. *Securities and Exchange Commission*, 143 F. 2d 746, 748-749 (C.A. 1944), cert. den. 323 U.S. 768 (1944).

The decision and order of the District Court below was definitive.[1] Nothing more remained to be done except to execute the order of that Court. An appeal was thus appropriate "without the necessity of waiting for disobedience." *Cobbledick* v. *United States*, *op. cit.*, p. 330.

This Court has held, in a notable decision, that "Violations of an order are punishable as criminal contempt even though the order is set aside on appeal. . . . Orders . . . were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise." *United States* v. *United Mine Workers of America*, 330 U.S. 258, 294 (1947); see also *Penfield Co.* v. *S.E.C.*, 330 U.S. 585 (1947); *Securities Exchange Commission* v. *Okin*,

[1] If the District Court order were truly interlocutory, it would appear that appellate jurisdiction would nevertheless be present under Section 1292(a)(1) of the Judicial Code, 28 U.S.C. Sec. 1292(a)(1). The order of the District Court would in effect constitute an interlocutory mandatory injunction.

137 F. 2d 862, 863 (C.A. 2, 1943). But if appeal is not to be permitted in the situation presented by this case, how is a wrongful order to be set aside? The implicit recommendation that the petitioner defy and disregard the order of the District Court, as a requirement for "additional" finality, would mock justice and sensible procedure. Both technical considerations of the finality rule and sound policy support the right to appeal and point out the error of the Court below.

CONCLUSION.

For the foregoing reasons it is respectfully urged that the petition for a writ of certiorari should be granted.

Respectfully submitted,

WALTER J. ROCKLER,
Attorney for Petitioner.

APPENDIX A.

Statutes Involved.

Judicial Code (Title 28 of the United States Code), Section 1291, provides as follows:

§ 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

Internal Revenue Code (Title 26 of the United States Code):

Sec. 7602. Examination of Books and Witnesses.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized —

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Sec. 7604. Enforcement of Summons.

(a) Jurisdiction of District Court. — If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement. — Whenever any person summoned under section 6420(e)(2), 6421(f)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary or his delegates may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have the power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) Cross References. —

(1) Authority to Issue Orders, Processes, and Judgments. —

For authority of district courts generally to enforce the provisions of this title, see section 7402.

(2) Penalties. —

For penalties applicable to violation of section 6420(e)(2), 6421(f)(2), or 7602, see section 7210.

APPENDIX B.

Opinions and Judgments Below.

COURT OF APPEALS JUDGMENT

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago 10, Illinois

Monday, May 14, 1962
Before
Hon. JOHN S. HASTINGS, Chief Judge
Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge

In the Matter of the Application for Enforcement of Summonses issued by the Commissioner of Internal Revenue, etc. ROMUALD M. SOJA, Internal Revenue Agent, *Petitioner-Appellee,* vs. No. 13558 MAURICE L. and HELEN T. DAVIS, etc., *Respondents-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that appellants' appeal from an order of said District Court in this cause be, and the same is hereby, DISMISSED for lack of jurisdiction, in accordance with the opinion of this Court filed this day.

COURT OF APPEALS OPINION

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1961—APRIL SESSION, 1962

No. 13558

IN THE MATTER OF THE APPLICATION FOR ENFORCEMENT OF SUMMONSES ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE TO MAURICE L. AND HELEN T. DAVIS, Individually and MAURICE L. DAVIS, as Trustee of Trusts "A" and "B", dated March 1, 1952, and Trusts "A", "B", "C" and "D", dated October 1, 1952.

ROMUALD M. SOJA, Internal Revenue Agent,

Petitioner-Appellee,

v.

MAURICE L. and HELEN T. DAVIS, Individually and MAURICE L. DAVIS, as Trustee of Trusts "A" and "B", dated March 1, 1952, and Trusts "A", "B", "C" and "D", dated October 1, 1952.

Respondents-Appellants.

On Appeal from the Order of the United States District Court for the Northern District of Illinois.

May 14, 1962

Before HASTINGS, *Chief Judge*, and KNOCH and CASTLE, *Circuit Judges*.

CASTLE, *Circuit Judge*. This is an appeal from an order of the District Court directing the appellant,[1] Maurice

[1] Helen T. Davis, appellant's wife, is not a party to this action.

L. Davis, as an individual and as the trustee of six specified trusts, to comply with eight summonses issued by the Internal Revenue Service calling for the production of certain books and records. Appellant had appeared before the Internal Revenue Agent but refused to produce the information or records called for in the summonses. Appellee filed a petition in the District Court pursuant to the provisions of 26 U.S.C.A. §7604 praying that a writ of attachment issue to bring appellant before the court to show cause why he should not be held for contempt for failure to comply with the summonses of the Commissioner of Internal Revenue. The appellant filed an answer and, after a hearing, the District Court entered the order from which this appeal is prosecuted.

The government contends that the order appealed from is interlocutory and that therefore this Court lacks jurisdiction of this appeal. Our agreement with the government's contention is dispositive of the appeal and makes it unnecessary for us to consider other issues raised by the parties.

The decision of this Court in *Jarecki* v. *Whetstone*, 7 Cir., 192 F. 2d 121, is a controlling precedent on the issue here presented. We had occasion to point out in *United States* v. *Vivian*, 7 Cir., 217 F. 2d 882, that the rationale of *Whetstone* is grounded on the nature of the specific statutory provision here involved. §7604 provides "for an attachment against [the recusant witness] as for a contempt". The proceedings is one for contempt and the order to testify and produce the records designated is but an interlocutory step to afford the witness an opportunity to purge himself. It is not the "end of a proceeding begun against the witness". *Cf. Ellis* v. *Interstate Commerce Commission*, 237 U.S. 434, 442. In *Cobbledick* v. *United States*, 309 U.S. 323, it was recognized (p. 329) that procedures for the enforcement of subpoenas may differ and that where a statutory proceeding afforded for the enforcement of an administrative subpoena terminates with the order directing compliance such an order in final and reviewable. But such is not the case with a con-

tempt proceeding initiated pursuant to §7604. Such proceeding is not terminated by an order directing compliance.

And, contrary to appellant's contention, our decision in *McDermott* v. *John Baumgarth Company*, 7 Cir., 286 F. 2d 864, is not a rejection of *Whetstone*. There the government's appeal was from an order directing that books and records be returned to the taxpayer[2] but that the Internal Revenue agents be given access to certain of them. The order was a complete and final rejection of the government's claimed right to continued possession of the books and records and the relief it sought to obtain and in substance terminated the proceeding.

We are cognizant that other Circuits have held that an order directing compliance entered pursuant to §7604 is final and appealable within the meaning of 28 U.S.C.A. §1291.[3] In our considered judgment the opinions embodying such rulings have failed to recognize the distinction between a contempt proceeding initiated pursuant to §7604 —which is not terminated by the order directing compliance—and other types of statutory enforcement procedures in which the enforcement order is the end of the proceeding, complete in itself, and the order, if not obeyed, the basis for a contempt adjudication in a separate proceeding.

Appellant's appeal is dismissed for lack of jurisdiction.

APPEAL DISMISSED.

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[2] The taxpayer asserted by way of cross-appeal that the government had failed to establish a right to examination of the books and records to which it was accorded access under the order. This Court rejected the taxpayer's contention and affirmed the order without discussion of the Court's jurisdiction of the cross-appeal.

[3] *O'Conner* v. *O'Connell*, 1 Cir., 253 F. 2d 365; *In re Albert Lindley Lee Memorial Hospital*, 2 Cir., 209 F. 2d 122; *Falsone* v. *United States*, 5 Cir., 205 F. 2d 734; *Brownson* v. *United States*, 8 Cir., 32 F. 2d 844. Cf. *Wall* v. *Mitchell*, 4 Cir., 287 F. 2d 31, where the question was not raised.

DISTRICT COURT ORDER

UNITED STATES DISTRICT COURT
Northern District Of Illinois
Eastern Division

In The Matter Of The Application For Enforcement Of Summonses Issued By The Commissioner Of Internal Revenue To Maurice L. and Helen T. Davis, Individually, and Maurice L. Davis, as Trustee of Trusts "A" and "B" Dated March 1, 1952, and Trusts "A", "B," "C," and "D," Dated October 1, 1952	No. 61 C 1502

ORDER

This matter having come on for hearing on the petition of Romuald M. Soja, Internal Revenue Agent, a duly authorized delegate of the Secretary of the Treasury, by James P. O'Brien, United States Attorney for the Northern District of Illinois, and the Court having jurisdiction of the subject matter and persons herein, and the Court being fully advised in the premises upon a hearing on the merits, testimony having been received and evidence produced,

It Is Determined That:

1. Pursuant to Sections 7602 and 7603, Internal Revenue Code of 1954, the Commissioner of Internal Revenue, a delegate of the Secretary of the Treasury of the United States, by and through Romuald M. Soja, Internal Revenue Agent, personally served summonses upon the respondents Maurice L. Davis, as an individual, and upon Maurice L. Davis as Trustee of Trusts "A" and "B," dated March 1, 1952, and Trusts "A", "B," "C," and "D," dated October 1, 1952, on the 12th day of July, 1961, requiring the

respondents to appear and to produce certain books and records and other documents on the 24th day of July, 1961, at the Internal Revenue Service Office, 17 North Dearborn Street, Chicago, Illinois.

2. The respondent, Maurice L. Davis, as an individual, failed to comply with said summons in that he did not produce his books and records and other documents at the time and place appointed, as required by said summons.

3. The respondent, Maurice L. Davis, as Trustee of Trust "A" dated March 1, 1952, failed to comply with said summons in that he did not produce a copy of the partnership agreement for the H & R Builders partnership, of which Edward Hochman, Haskell Richards, Maurice L. Davis, as Trustee of Trust "A" dated March 1, 1952, and Maurice L. Davis, as Trustee of Trust "B" dated March 1, 1952, were members, nor did he produce copies of all partnership returns filed by H & R Builders from date of organization to date of dissolution, nor did he produce any books and records of H & R Builders partnership, at the time and place appointed, as required by said summons.

4. The respondent, Maurice L. Davis, as Trustee of Trusts "A" and "B" dated March 1, 1952, failed to comply with said summonses in that he did not produce the books and records of said trusts for the taxable years ended February 28, 1953, February 28, 1954, February 28, 1955 and February 29, 1956, at the time and place appointed, as required by said summonses.

5. The respondent, Maurice L. Davis, as Trustee of Trusts "A," "B," "C," and "D" dated October 1, 1952, failed to comply with said summonses in that he did not produce the books and records of the trusts for the taxable years ended September 30, 1953, September 30, 1954 and September 30, 1955, at the time and place appointed, as required by said summonses.

6. The Internal Revenue Service is investigating the internal revenue tax liability to the United States of America of Maurice L. and Helen T. Davis for their taxable years ending in 1954 and 1955.

7. There are reasonable grounds for believing that the books and records requested contain information important and material to the said investigation now being conducted by the Internal Revenue Service.

Therefore, It Is Hereby Ordered that Maurice L. Davis, as an individual, and Maurice L. Davis as Trustee of Trusts "A" and "B" dated March 1, 1952 and Trusts "A," "B," "C," and "D" dated October 1, 1952, comply with said summons by simultaneously producing all of those books and records requested by said summonses which he has in his possession or control for examination to Internal Revenue Agent Romuald M. Soja, at Room 1426, 17 North Dearborn Street, Chicago, Illinois, on or before 1:00 P.M. September 29, 1961, said examination to continue from time to time until completed.

Enter:

/s/ Igoe
Judge.

Date: September 27, 1961.

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 271

MAURICE L. DAVIS, PETITIONER

v.

ROMUALD M. SOJA, INTERNAL REVENUE AGENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The question presented is whether an order directing compliance with an Internal Revenue summons issued under Section 7602 of the Internal Revenue Code of 1954, in an enforcement proceeding brought under Section 7604(b) of the Internal Revenue Code of 1954, is an interlocutory order. If it is an interlocutory order, the court of appeals lacks jurisdiction of the appeal under 28 U.S.C. 1291, which allows appeals only from "final decisions" of the district courts.

Revenue agent Soja served several Internal Revenue summonses on petitioner, requiring him to produce certain books and records. Petitioner refused to comply, and an enforcement proceeding was insti-

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tuted. After a hearing, the district court ordered compliance. On petitioner's appeal from that order, the Seventh Circuit dismissed for lack of jurisdiction. In so doing, it characterized a Section 7604(b) enforcement proceeding—as distinguished from proceedings for the enforcement of other administrative subpoenas[1]—as one for contempt *ab initio*: "the order to testify and produce the records designated is but an interlocutory step to afford the witness an opportunity to purge himself" and "not the 'end of a proceeding begun against the witness'" (Pet. 5a). It followed, the court concluded, that only an order sentencing the witness for contempt is appealable.

We agree that, as the court of appeals observed (Pet. 6a), the decision in the instant case cannot be reconciled with the decisions of the First,[2] Second,[3] Fifth[4] and Eighth[5] Circuits. The issue arises frequently and its resolution is administratively important. Accordingly, the government does not oppose the issuance of a writ of certiorari.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

AUGUST 1962.

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[1] Cf. *Ellis* v. *Interstate Commerce Commission*, 237 U.S. 434, 442; *Cobbledick* v. *United States*, 309 U.S. 323, 329–330.

[2] *O'Connor* v. *O'Connell*, 253 F. 2d 365.

[3] *In re Albert Lindley Lee Memorial Hospital*, 209 F. 2d 122, certiorari denied *sub nom. Cincotta* v. *United States*, 347 U.S. 960.

[4] *Falsone* v. *United States*, 205 F. 2d 734, certiorari denied, 346 U.S. 864.

[5] *Brownson* v. *United States*, 32 F. 2d 844.

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